

STATE OF ARKANSAS

PROCUREMENT LAW

AND

REGULATIONS

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OFFICE OF STATE **PROCUREMENT**
DEPARTMENT OF FINANCE AND ADMINISTRATION
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INTRODUCTION

This document is a composite of the Arkansas **Procurement** Law, **Procurement** Regulations and extracts from other laws which have a direct impact on state procurement. It is provided as a working reference for state agency **procurement** personnel.

The reference index enables quick access to the appropriate subject being researched. It also identifies the section of the law and/or regulation that applies.

The numbering system used is keyed to the numbering of the Arkansas Code of 1987 Annotated. The title, chapter, subchapter and section of the code references are contained within the number. Thus, in the designation "19-11-201," the "19" means the provision is in Title 19, the "11" indicates chapter 11 and the "2" in 201 means subchapter 2, with the "01" indicating the first section of the subchapter.

The regulations are identified by the letter "R" and the regulation number prior to the code reference. For example, in the regulation designation "R1:19-11-224," the "R1:" indicates it is a regulation. The "19-11-224" is the code (law) to which the regulation relates. Regulations are inserted immediately following the appropriate section of the law.

The laws appear in bold print and the regulations are in italics. Regulations are also indented and centered for easier reference.

The appendices contain information relating to **procurement** not included in the body of this document. Only items of interest to all agencies have been included.

CONTENTS

| | <u>Page</u> |
|---|--------------------|
| Introduction | 2 |
| <u>Part #1</u> | |
| Arkansas Procurement Law | 3 |
| Statutes & Regulations 19-11-201 thru 19-11-263, 19-11-601 thru 19-11-604, and 19-11-901 and 19-11-902 | |
| <u>Part #2</u> | |
| Marketing & Redistribution | 65 |
| Statutes & Regulations 25-8-106 and 19-11-242 thru 19-11-243 | |
| <u>Part #3</u> | |
| Prison Made Goods | 71 |
| Statutes & Regulations 12-30-202 thru 12-30-214 and 19-11-301 thru 19-11-306 | |
| <u>Part #4</u> | |
| Ethics in Public Contracting | 76 |
| Statutes & Regulations 19-11-701 thru 19-11-717 | |
| <u>Part #5</u> | |
| Minority Procurement | 84 |
| Statutes & Regulations 15-4-301 thru 15-4-319 | |
| Appendix Index Page | 90 |
| #1 – Signature Requirements on Invitations for Bids | 91 |
| #2 – State Accounting and Budgetary Procedures | 92 |
| Statutes 19-4-702 thru 19-4-704, 19-4-1701 thru 19-4-1716 and 19-11-801 thru 19-11-806 | |
| #3 – Procurement Codes | 104 |
| #4 – Risk Management | 107 |
| Statutes 23-61-602 thru 23-61-610 | |
| #5 – Motor Vehicles | 110 |
| Statutes 22-8-101 thru 22-8-104 | |
| #6 – Disbursement of Public Funds | 113 |
| Statute 19-4-1206 | |
| #7 – General Provisions | 114 |
| Statute 19-11-101 and 19-11-102 | |

COMPOSITE OF ARKANSAS **PROCUREMENT** LAW AND REGULATIONS

SUBCHAPTER 2 - ARKANSAS **PROCUREMENT** LAW

19-11-201. Title.

This subchapter shall be referred to as the "Arkansas **Procurement** Law."

19-11-202. Purposes and policies.

The underlying purposes and policies of this subchapter are to:

- (1) Simplify, clarify, and modernize the law governing procurement by this state;
- (2) Permit the continued development of procurement policies and practices;
- (3) Provide for increased public confidence in the procedures followed in public procurement;
- (4) Ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;
- (5) Provide increased economy in state procurement activities by fostering effective competition; and
- (6) Provide safeguards for the maintenance of a procurement system of quality and integrity.

19-11-203. Definitions generally.

As used in this subchapter, unless the context otherwise requires:

(1)(A) "Agency procurement official" means any person authorized by a state agency to enter into and administer contracts and make written determinations and findings with respect thereto, in accordance with procedures prescribed by this subchapter and the regulations promulgated under it.

(B) The term also includes an authorized representative acting within the limits of authority;

(2) "Business" means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity;

(3)(A) "Capital improvement" means all lands, buildings, structures, utilities, on-site and off-site improvements, and other appurtenant improvements, existing or future, and all construction, repairs, alterations, and renovations thereof which are undertaken, owned, operated, or otherwise managed by a state agency.

(B) "Capital improvement" shall not include construction and reconstruction of roads and bridges in the state highway system by the State Highway Commission, nor shall the term "capital improvement" include any building, facility, plant, structure, or other improvement constructed by, or in behalf of, the Arkansas State Highway and Transportation Department or the State Highway Commission;

(4) "Commodities" means all property, including, but not limited to, equipment, printing, stationery, supplies, and insurance but excluding leases on real property, real property or a permanent interest in real property, exempt commodities and services, and capital improvements;

(5)(A) "Contract" means all types of state agreements, regardless of what they may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.

(B)(i) It includes awards and notices of award, contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.

(ii) It also includes supplemental agreements with respect to any of these items;

(6) "Contract modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract;

(7) "Contractor" means any person having a contract with a state agency;

(8) "Data" means recorded information, regardless of form or characteristic;

(9) "Debarment" means the disqualification of a person to receive invitations for bids or requests for proposals or the award of a contract by the state for a specified period of time commensurate with the seriousness of the offense or the failure or the inadequacy of performance;

(10) "Designee" means a duly authorized representative of a person holding a superior position;

(11) "Electronic" means electrical, digital, magnetic, optical, or any other similar technology;

(12) "Employee" means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any agency;

(13) "Exempt agencies" means the constitutional departments of the state, including the Legislative Council and the Legislative Joint Auditing Committee;

(14) "Exempt commodities and services" means:

(A) Advertising in newspapers, periodicals, and related publications, and on television, radio, billboards, and electronic media;

(B) Animals procured for medical research;

(C)(i) Commodities and services for use in research, education, and treatment for the diagnosis, cure, and prevention of disease may be procured, with administrative approval, through a group purchasing entity serving other public health institutions when substantial savings are available.

(ii) A report shall be filed annually with the division of the Legislative Audit reflecting the justification of and the estimated savings accruing due to the use of this exemption;

(D)(i) Commodities procured for resale in cafeterias, commissaries, bookstores, gift shops, canteens, and other similar establishments.

(ii) However, these commodities procured shall not be sold or transferred to any agency with the intent of circumventing applicable procurement procedures;

(E) Commodities procured from nonprofit workshops in accordance with § 19-11-901 et seq.;

(F)(i) Contracts awarded by agencies for the construction of buildings and facilities and for major repairs.

(ii) These contract exemptions shall not extend to the procurement of any commodities not otherwise exempt, which are to be furnished by the agency under any such contract;

(G) Contracts awarded by the Arkansas State Highway and Transportation Department for the construction, reconstruction, and maintenance of roads and bridges in the state highway system and for the county, rural road aid, and city street aid programs;

(H) Contracts by institutions of higher learning for personal and consulting services and contracts with students;

(I) (i) Farm products procured or sold by a state agency having an agency procurement official.

(ii) The current trade customs with respect to the procurement or sale of cotton, cotton seed, rice, and other farm products shall be followed when it is necessary to do so in order to obtain the best price for the commodities procured or sold;

(J) Fees, including medical fees and physician fees;

(K) Foster care maintenance services provided by foster family homes approved by the Division of Children and Family Services for children whose placement and care are the responsibility of the division;

(L) Freight and storage charges and demurrage;

(M) Licenses required prior to performance of services;

(N)(i) Livestock procured by an agency having an official experienced in selection and procurement of livestock.

(ii) Such procurement will be reported to the State Procurement Director, giving details of the purchase;

(O) Livestock procured for breeding, research, or experimental purposes;

(P) Maintenance on office machines and technical equipment;

(Q) Medical items specifically requested by a physician for treatment or diagnosis of patients in his or her care including prosthetic devices, surgical instruments, heart valves, pacemakers, radioisotopes, and catheters;

(R) Membership in professional, trade, and other similar associations;

(S) Perishable foodstuffs for immediate use or processing;

(T) Postage;

(U) Professional and consultant services procured in accordance with § 19-4-1701 et seq.;

(V) Published books, manuals, maps, periodicals, films, technical pamphlets, and copyrighted educational aids for use in libraries and for other informational or instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of them;

- (W) Services of visiting speakers, lecturers, and performing artists;
- (X) Taxes;
- (Y) Travel expense items such as room and board and transportation charges;
- (Z) Utility services or equipment which is defined, recognized, and regulated by the Arkansas Public Service Commission as a monopoly offering; and
- (AA) Works of art for museum and public display;

R1:19-11-203. Definitions of terms used in this Act.

Exempt commodities and services means:

(a) **(15)**(C) *Commodities procured for resale does not include items used to support the sale of goods or services such as reusable items or items used in preparing, serving, dispensing, or packaging, except for vendor packaging included with the item purchased.*

(b) **(15)**(H) *Farm products includes unprocessed feed for livestock.*

(c) **(15)**(K) *"License" does not mean software license.*

(d) **(15)**(M) *Livestock breeding to include ova and semen.*

(e) **(15)**(N) *Technical equipment for maintenance purposes shall include, but not be limited to, medical, dental, laboratory, and health aid equipment, climate control equipment, **water treatment services**, elevators, musical instruments, communications equipment, data processing equipment, and specialized research equipment.*

(f) **(15)**(Q) *Perishable foodstuffs shall be limited to produce.*

(g) *Retail gasoline credit card purchases are exempt by regulation, regardless of the amount.*

(h) *Renewals of termite protection contracts with the contractor who performed the initial treatment of the facility are exempt. Not exempt are termite protection contracts which include the initial treatment.*

(15)(A)(i) "Grant" means the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law.

(ii) It does not include an award whose primary purpose is to procure an end product, whether in the form of commodities or services.

(B) A contract resulting from such an award is not a grant but a procurement contract;

(16) "May" means the permissive;

(17) "Paper product" means any item manufactured from paper or paperboard;

(18) "Person" means any business, individual, union, committee, club, or other organization or group of individuals;

(19) "Political subdivisions" means counties, municipalities, and school districts;

(20)(A) "Procurement" means the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services.

(B) It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, disposal of commodities, and all phases of contract administration;

(21) "Procurement agency" means any state agency which is authorized by this subchapter or implementing regulations, or by way of delegation from the State Procurement Director to contract on its own behalf rather than through the central contracting authority of the State Procurement Director;

(22)(A) "Procurement agent" means any person authorized by a state agency not having an agency procurement official to enter into and administer contracts and make written determinations and findings with respect thereto, in accordance with procedures prescribed by this subchapter.

(B) The term also includes an authorized representative acting within the limits of authority;

(23)(A) "Public funds" means all state-appropriated and cash funds of state agencies, as defined by applicable law or official ruling. Public funds for purposes of this subchapter shall not include funds administered by, or under the control of, agencies, except public funds.

(B) Without necessarily being limited thereto, it does not include grants, donations, research contracts, and revenues derived from self-supporting enterprises which are not operated as a primary function of the agency, no part of which funds are deposited in the State Treasury;

(24) "Public notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods will often include publication in newspapers of general circulation, electronic or paper mailing lists, and websites designated by the State of Arkansas and maintained for that purpose;

(25)(A) "Purchase request" means that document written or electronic whereby a using agency requests that a contract be obtained for a specified need.

(B) It may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written or electronic determination and finding required by this subchapter;

(26) "Recycled paper" means paper which contains recycled fiber in a proportion specified by the State Procurement Director;

(27)(A) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

(B) This term shall not include employment agreements, collective bargaining agreements, exempt commodities and services, or architectural or

engineering contracts requiring approval of Arkansas State Building Services or public institutions of higher education;

(28) "Shall" means the imperative;

(29) "Signature" means a manual or an electronic or a digital method executed or adopted by a party with the intent to be bound by or to authenticate a record which is:

(A) Unique to the person using it;

(B) Capable of verification;

(C) Under the sole control of the person using it; and

(D) Linked to data in such a manner that if the data are changed, the electronic signature is invalidated;

(30)(A) "State agency" means any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state, except exempt agencies in their procurement of items not subject to Arkansas Constitution, Amendment 54.

(B) "State agency" includes exempt agencies when any agency or exempt agency procures any item subject to Arkansas Constitution, Amendment 54;

(31)(A) "State contract" means a contract for the procurement of commodities or services in volume, awarded by the State Procurement Director.

(B) The contract may apply to all or part of the state;

(32) "State Procurement Director" means the person holding the position created in § 19-11-216, as the head of the central procurement office of the State of Arkansas;

(33) "Suspension" means the disqualification of a person to receive invitations for bids, requests for proposals, or the award of a contract by the state for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance, which may lead to debarment;

(34) "Using agency" means any state agency which utilizes any commodities or services purchased under this subchapter; and

(35) "Written" or "in writing" means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

19-11-204. Definitions concerning source selection and contract formation.

As used in this subchapter, unless the context otherwise requires:

(1) "Competitive bidding" as defined in § 19-11-234(a); and

(2) "Competitive sealed bidding", as defined in § 19-11-229(a);

(3) "Competitive sealed proposals", as defined in § 19-11-230(a);

(4) "Emergency procurement" means the acquisition of commodities or services, which if not immediately initiated, will endanger human life or health, state property, or the functional capability of a state agency;

(5) "Established catalogue price" means the price included in a catalogue, price list, schedule, or other form that:

(A) Is regularly maintained by a manufacturer or contractor;

(B) Is either published or otherwise available for inspection by customers; and

(C) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the commodities or services involved;

(6) "Invitation for bids" means all documents or electronic media, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in § 19-11-229, which refers to competitive sealed bidding;

(7) "Multiple award contracts" means a method of procurement whereby an indefinite quantity contract is awarded to more than one (1) supplier for furnishing a like item or category of items.

(8) "Purchase description" means specifications or any other document or electronic media describing the commodities or services to be procured;

(9) "Request for proposals" means all documents or electronic media, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in § 19-11-230, which refers to competitive sealed proposals, § 19-11-231, which refers to small procurements § 19-11-232, which refers to proprietary or sole source procurements, § 19-11-233, which refers to emergency procurements, or § 19-11-234, which refers to competitive bidding;

(10) "Responsible bidder or offeror " means a person who has the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance;

(11) "Responsive bidder" means a person who has submitted a bid under § 19-11-229, which refers to competitive sealed bidding, which conforms in all material respects to the invitation for bids, including the specifications set forth in the invitation; and

(12)(A)(i) "Small procurements means any procurement not exceeding a purchase price of five thousand dollars (\$5000). Small purchases may be procured without seeking competitive bids or competitive sealed bids.

(ii) However, competition should be used to the maximum extent practicable.

(B) Items under state contract are excluded.

19-11-205. Definitions concerning commodity management.

As used in this subchapter, unless the context otherwise requires:

(1) "Commodities" means, for purposes of this section, §§ 19-11-242 and 19-11-243, commodities owned by the state. See § 19-11-203, which refers to commodities;

(2) "Nonexpendable commodities" means all tangible commodities having an original acquisition cost of over three hundred dollars (\$300) per unit and a useful life of more than one (1) year;

(3) "Expendable commodities" means all tangible commodities other than nonexpendable commodities;

(4) "Excess commodities" means any commodity, other than expendable commodities, having a remaining useful life but which the using agency in possession of the commodity has determined is no longer required by such agency; and

(5) "Surplus commodities" means any commodities, other than expendable commodities, no longer having any use to the state. This definition includes obsolete commodities, scrap materials, and nonexpendable commodities that have completed their useful life cycle.

R1:19-11-205. Definitions concerning commodity management.

(A) "Tax supported institutions" means institutions that derive at least fifty percent (50%) of their revenue by appropriation from a taxing jurisdiction.

(B) "Cannibalization" means the process whereby a nonexpendable surplus or excess commodity is dismantled for parts to be used as replacements or as components of other machines or devices.

19-11-206. Definitions concerning intergovernmental relations.

As used in this subchapter, unless the context otherwise requires:

(1) "State public procurement unit" means the Office of State Procurement and any other procurement agency of this state;

(2) "Local public procurement unit" means:

(A) Any county, city, town, state agency, and any other subdivision of the state or public agency thereof;

(B) Any fire protection district;

(C) Any regional water distribution district;

(D) Any rural development authority;

(E) Any public authority;

(F) Any public educational, health, or other institution;

(G) Any nonprofit corporation during such time that it contracts with the Division of Developmental Disabilities Services of the Department of Human Services to provide services to the developmentally disabled, provided the contract exceeds seventy-five thousand dollars (\$75,000) per year;

(H) Any nonprofit corporation providing fire protection services to a rural area or providing drinking water to the public in a rural area;

(I) Any nonprofit corporation which contracts with the Department of Human Services, provided that the contract includes provisions for transportation

services, and the contract exceeds seventy-five thousand dollars (\$75,000) per year; and

(J) To the extent not prohibited by law, any other entity which expends public funds for the acquisition or leasing of commodities and services;

(3) "Public procurement unit" means either a local public procurement unit or a state public procurement unit;

(4)(A) "External procurement activity" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit.

(B) An agency of the federal government is an external procurement activity; and

(5) "Cooperative procurement" means procurement conducted by, or on behalf of, more than one (1) public procurement unit or by a public procurement unit with an external procurement activity.

19-11-207. Applicability.

(a) This subchapter shall apply to every expenditure of public funds by this state, acting through a state agency as defined in § 19-11-203, under any contract. This subchapter shall not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in §§ 19-11-206 and 19-11-249 - 19-11-258. It shall also apply to the disposal of state commodities. This subchapter shall not apply to contracts between agencies, except as provided in §§ 19-11-206 and 19-11-249 - 19-11-258.

(b) The provisions of this subchapter shall not preclude the acceptance of gifts and donations in the manner authorized by law.

19-11-208. Exemptions.

Commodities and services need not be procured through the Office of State Procurement, if procured by the out-of-state offices of state agencies for that out-of-state office's use but shall, nevertheless, be procured subject to the requirements of this subchapter and the state procurement regulations.

19-11-209. Construction.

This subchapter shall be construed and applied to promote its underlying purposes and policies.

19-11-210. Operation of other laws.

Unless displaced by the particular provisions of this subchapter, the principles of law and equity, including the Uniform Commercial Code, § 4-1-101 et seq., of this state, the law merchant, and law relative to capacity to contract, agency, fraud, misrepresentation, duress, coercion, mistake, or bankruptcy shall supplement its provisions.

19-11-211. Obligation of good faith.

Every contract or duty within this subchapter imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

19-11-212. Existing contracts.

The administration of contracts in existence on July 1, 1979, shall be the responsibility of the appropriate officials described in this subchapter.

19-11-213. Federal assistance requirements.

In the event federal assistance requirements conflict with the provisions of this subchapter or regulations promulgated under it, nothing in this subchapter or its regulations shall prevent any state agency or political subdivision from complying with the terms and conditions of the federal assistance requirements.

19-11-214. Determinations and findings.

Written determinations and findings required by this subchapter shall be retained in an official contract file by the Office of State Procurement or by the state agency administering the contract for a period of five (5) years.

R1:19-11-214. Determination.

(A) Written procurement determinations. Written determinations and findings shall be signed by the employees making said determinations and findings.

(B) Contract files must be retained for five (5) years after all contract renewals (if any) have expired.

19-11-215. Office of State Procurement.

(a) There is created within the Department of Finance and Administration an Office of State Procurement to be administered by the State Procurement Director.

(b)(1) The office shall be subject to the supervision and management of the Director of the Department of Finance and Administration.

(2) The rules and regulations authorized in this subchapter shall be approved by the Director of the Department of Finance and Administration prior to the filing of the rules and regulations in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

19-11-216. State Procurement Director.

(a)(1) The executive head of the Office of State Procurement is designated as the administrator of the Office of State Procurement, and as such, he or she shall be known and designated as the State Procurement Director.

(2) The administrator shall be appointed by the Director of the Department of Finance and Administration.

(b) The administrator shall be at least thirty (30) years of age, of good moral character, and of demonstrated ability or capacity in the field of purchasing commodities.

19-11-217. Powers and duties of director.

(a) The State Procurement Director shall serve as the principal procurement officer of the state.

(b)(1) Except as otherwise provided in this subchapter and upon the approval of the Director of the Department of Finance and Administration, the State Procurement Director shall have the authority and responsibility to promulgate regulations consistent with this subchapter.

(2) In addition, consistent with the provisions of this subchapter, the State Procurement Director may adopt rules governing the internal procedures of the Office of State Procurement.

(c) Except as otherwise specifically provided in this subchapter, the State Procurement Director, within the limitations of this subchapter and the rules and regulations promulgated under authority of this subchapter:

(1) Shall procure or supervise the procurement of all commodities and services for each state agency not having an agency procurement official and, when requested to do so by such an official, procure commodities and services not otherwise under state contract;

(2) Shall manage and establish internal procedures for the office;

(3) Shall sell, trade, or otherwise dispose of surplus commodities belonging to the state;

(4) Shall have the authority to establish and maintain programs for the inspection, testing, and acceptance of commodities and services;

(5) Shall establish and manage a list of vendors desiring written notice of invitations for bid;

(6) May establish, by regulation, a fee for receiving a written or electronic notice of invitations for bid; and

(7) Shall ensure compliance with this subchapter and implementing regulations by reviewing and monitoring procurements conducted by any designee, department, agency, or official delegated authority under this subchapter.

*R1:19-11-217. Authority of the State **Procurement** Director.*

*Quality assurance, inspection, and testing. The State **Procurement** Director or agency **procurement** official shall be*

responsible for assuring that commodities and services conform to the necessary specifications, terms and conditions in the following situations:

(a) upon delivery, in response to a purchase order or contract award;

(b) before delivery when the bidder has responded to an invitation for bids and/or received a contract award;

(c) after a vendor(s) has submitted an alternative bid.

Examination of commodities and services may, where and when necessary, include laboratory testing and/or simulation studies.

R2:19-11-217. Authority of the State **Procurement** Director.

Reporting. The State **Procurement** Director shall have the authority to collect information from all **procurement** agencies to facilitate the preparation of statistical and financial reports on state government **procurement** activity.

R3: 19-11-217. Vendors List.

(A) Vendors list. The Office of State **Procurement** and each agency **procurement** official shall maintain a vendors list.

(B) Application. A business desiring written notice of invitations for bids shall make application to have its name placed on the vendors lists for the commodities and services it wishes to supply or provide. The business must provide complete information requested in the application before it will be considered for placement on a vendors list.

(C) Determination. The **procurement** agencies may refuse to list any prospective bidder not making proper application. The prospective bidder has the burden of showing that it meets the qualifications for inclusion on the vendors list on which it seeks to be listed. The prospective bidder will be promptly advised if its application is disapproved and the reasons for disapproval shall be stated.

(D) Reapplication. Any prospective bidder whose application is disapproved may reapply six (6) months following the date of disapproval.

(E) Removal.

(1) Any bidder who requests in writing to be removed from the vendors list shall be removed.

(2) Bidders who have been suspended and/or debarred shall be removed from the vendors list.

R4: 19-11-217. Authority of the State **Procurement** Director.

(A) Vendor fee. Vendors desiring written notice of invitations for bid from the Office of State **Procurement** shall make application to have their name placed on the **State Master Vendor** list for the commodities and services they wish to supply or provide. An annual fee **may** be **required** for receiving written notices of invitations for bid from the Office of State **Procurement**.

(B) Vendor fee. Upon receipt of a completed application and fee **(if required)**, a prospective **vendor's** eligibility **to be added to the vendor list** will be determined. A prospective **vendor** will be promptly advised if its application is approved or disapproved. If an application is disapproved, the prospective **vendor** will be notified and the vendor application fee, **if any**, will be returned with the notification.

(C) Vendor fee. Vendor fees collected will be used to offset the cost of furnishing invitations for bid to prospective bidders and will be deposited in the accounts from which those costs are incurred.

(D) **State master vendor master list**. Inclusion of the name of a business on the **vendor's** list does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing a contract.

(E) **Vendors** not on **vendor** lists. **Hard copies of** invitations to bid requested in response to public notice or other notification of a particular procurement will be provided to the requestor at a charge **consistent with the current costs of reproduction and distribution**.

(F) Recommended vendors. Vendors listed as recommended vendors on agency purchase requests will be furnished invitations to bid, however, if the contract is awarded to a "recommended vendor", that vendor must register on the State Master Vendor List and pay the fee.

19-11-218. Assistants and designees.

Subject to the provisions of the Uniform Classification and Compensation Act, § 21-5-201 et seq., the State Procurement Director may:

- (1) Employ and supervise such assistants and other persons as may be necessary;
- (2) Fix their compensation as provided by law; and
- (3) Delegate authority to such designees or to any state agency as the director may deem appropriate, within the limitations of state law and the state procurement rules and regulations.

R1:19-11-218. Appointment of assistants and other employees;

*Delegation of authority by the State **Procurement** Director.*

*(A) Delegation. The delegation to state agencies of the authority for the procurement of commodities and services may be made by the State **Procurement** Director. The delegation may be for a specific commodity or service or for all commodities and services for a specific period of time. Such delegation shall be made by a written order signed by the State **Procurement** Director or by regulations promulgated by the State **Procurement** Director setting forth with particularity the kind or type of procurement activity or function delegated together with any limitations or restrictions on the exercise of such authority.*

*(B) Limitations. All delegations of procurement authority shall remain in force according to the original terms thereof unless modified or until rescinded by the State **Procurement** Director.*

*(C) Small **procurements** and competitive bidding. All state agencies shall be authorized to make purchases according to the procedures for small purchases and competitive bidding as authorized by §§ 19-11-231 and 19-11-234 and regulations adopted pursuant thereto. All state agencies not having an agency **procurement** official shall designate a **procurement** agent for said delegated purchases and shall submit a letter signed by the administrative head of the state agency to the State **Procurement** Director designating each employee who shall be a **procurement** agent.*

19-11-219. Legal counsel.

The Attorney General shall act as counsel for the State Procurement Director in preparation of necessary contracts and in all legal matters.

19-11-220. Agency procurement officials.

(a) In addition to any state agency authorized by regulation to have an agency procurement official, each of the following state agencies may elect to have such an official for commodities and services which are not within the exclusive jurisdiction of the State Procurement Director, and which are not under state contract:

- (1) Arkansas State Highway and Transportation Department;**
- (2) Arkansas State University at Beebe;**
- (3) Arkansas State University at Jonesboro;**
- (4) Arkansas State University System;**
- (5) Arkansas Tech University;**
- (6) Henderson State University;**
- (7) Southern Arkansas University;**
- (8) University of Arkansas at Fayetteville;**

- (9) University of Arkansas Fund entities;**
- (10) University of Arkansas at Little Rock;**
- (11) University of Arkansas at Monticello;**
- (12) University of Arkansas at Pine Bluff;**
- (13) University of Arkansas for Medical Sciences;**
- (14) University of Central Arkansas;**
- (15) Arkansas State University at Mountain Home;**
- (16) Arkansas State University at Newport;**
- (17) Black River Technical College;**
- (18) Cossatot Technical College;**
- (19) East Arkansas Community College;**
- (20) Garland County Community College;**
- (21) Mississippi County Community College;**
- (22) Mid-South Community College;**
- (23) North Arkansas College;**
- (24) Northwest Arkansas Community College;**
- (25) Ouachita Technical College;**
- (26) Ozarka Technical College;**
- (27) Phillips Community College of the University of Arkansas;**
- (28) Petit Jean College;**
- (29) Pulaski Technical College;**
- (30) Rich Mountain Community College;**
- (31) Southern Arkansas University Tech;**
- (32) Southeast Arkansas College;**
- (33) South Arkansas Community College;**
- (34) University of Arkansas Community College at Batesville;**
- (35) University of Arkansas Community College at Hope;**
- (36) Westark College; and**
- (37) Department of Higher Education.**

(b)(1) Each official shall manage and establish internal procedures for the procurement office of the state agency authorized to have the official to ensure adequate administrative procedures and controls pursuant to law and the procurement regulations.

(2)(A) Approval by the Office of State Procurement of contracts administered by the official shall not be required, unless a determination has been made by the Director of the Department of Finance and Administration that administrative procedures and controls are not adequate.

(B)(i) Such determination shall result in notification by the Director of the Department of Finance and Administration of the specific deficiencies and the reasons therefor.

(ii) After the notification, approval of contracts by the Office of State Procurement shall be required until the Director of the Department of Finance and Administration determines that the deficiencies have been corrected.

(c) Except for the promulgation by the State Procurement Director of rules and regulations authorized in this subchapter and the letting of state contracts, all rights and practices granted herein to the Office of State Procurement and the

State Procurement Director are granted to an official in the administration of contracts for the state agency authorized to have the official.

(d) Nothing in this section is intended to prohibit an agency from utilizing the Office of State Procurement in the same manner as state agencies not authorized to have officials.

R1:19-11-220. **Procurement** agencies.

(A) Designation. **Each** state agency authorized by § 19-11-220 to elect to have an agency **procurement** official shall submit a letter signed by the administrative head of the state agency to the State **Procurement** Director designating **an** employee who shall be **the** agency **procurement** official.

(B) Internal procedures. The internal procurement procedures must ensure adequate management and control of the agency **procurement** functions pursuant to law and regulations. Each agency shall ensure that a current copy of its internal procurement procedures and regulations is **kept** on file. The internal procurement procedures established may include, but are not limited to:

(1) A method of recording and filing each transaction as follows:

- (a) legal notice where applicable;
- (b) the original invitation for bids, purchase order, internal purchase request, printing order, or other applicable document;
- (c) a list of all bidders invited to participate;
- (d) the original of all bids received;
- (e) an abstract of bids received; and
- (f) a copy of all correspondence, memos, or other documents related to the award and administration of each transaction, including administrative determinations or justifications when applicable.

(2) A file containing each vendor's application and reports regarding the vendor's performance.

(C) Limitations. Upon request of the Director of the Department of Finance and Administration or his designee, the agency **procurement** official shall make available for audit and inspection records of any and all transactions pertaining to the procurement of commodities and services.

(D) General. A state agency having an agency **procurement** official may request the Office of State **Procurement** to procure specific commodities and services which the agency **procurement** official is authorized to procure or to procure all commodities and services which the agency **procurement** official is authorized to procure for a specific period of time.

19-11-221. Agency procurement official for Department of Correction.

(a) In addition to those agencies, institutions, and departments of state government enumerated in § 19-11-220 which are authorized to elect to have agency procurement officials for commodities and services which are not within the exclusive jurisdiction of the State Procurement Director, which are not under state contract, and which are not procured in accordance with § 19-11-230, the Department of Correction and the Department of Community Correction are authorized to have such officials, for the sole purpose of procuring perishable food items, who shall possess all powers, functions, and duties as authorized for agency procurement officials under the provisions of this subchapter with respect to perishable food items only.

(b)(1) The officials of the Department of Correction and the Department of Community Correction shall have exclusive authority to procure perishable food items in accordance with applicable administrative procedures and controls established pursuant to this subchapter and the procurement regulations.

(2) Except as noted in this subsection and in subsection (c) of this section, the officials of the departments shall be subject to all other provisions and requirements of this subchapter and administrative procedures controls and procurement regulations provided in or promulgated pursuant to it.

(c)(1)(A) The Board of Corrections, annually, and at more frequent intervals if deemed necessary, shall make studies and determine whether it would be in the best interest of the management of the farm croplands at the farm units or at each of the separate farm units of the Department of Correction to provide for the lease of farm machinery and equipment, or certain items thereof, required for the production of farm crops, or whether it would be in the better interest of the Department of Correction to acquire such items of farm machinery and equipment by purchase.

(B)(i) Upon conclusion of the study, the board, by resolution adopted by a majority of the members of the board at a regular or special meeting, may authorize the agency procurement official for the Department of Correction to advertise for bids for the leasing of farm equipment or for the purchase of the items of farm equipment noted in the resolution.

(ii) No lease of farm equipment shall be for more than two (2) years nor extend beyond June 30 of the fiscal biennium for which current funds have been appropriated for the operation of the Department of Correction. However, nothing in this section shall prohibit the lease from including provisions, terms, or conditions upon which the lease may be renewed for an additional period of time, not exceeding two (2) years, at the option of the board.

(2)(A) In the event the board determines to provide for the leasing of farm machinery or equipment necessary in the farming operations of the Department of Correction, the official of the department shall be the exclusive purchasing agent for advertising of bids and awarding of contracts for the leases, subject to the approval of the director of the department and the board.

(B) In the advertising for bids and the awarding of contracts, the state laws, procurement procedures, and rules and regulations shall be complied with in awarding the contracts.

(C) It shall not be mandatory upon the board to award the contract for the furnishing of farm machinery and equipment under a lease agreement to the lowest bidder, unless the board shall determine that the awarding of the contract to such bidder would be in the best interest of the farming operations of the Department of Correction. In that event, the board may award the contract to the bidder whose bid proposal is deemed by the board to be in the better interest of the farming operations of the Department of Correction.

(D) In making this determination the board shall consider, but not be limited by, the following factors:

- (i) The type of equipment to be furnished;**
- (ii) Compatibility of the equipment with the training and experience of the farm managers and employees of the Department of Correction and the experience and skills of the inmates who will be using the equipment;**
- (iii) Provisions contained in the bid proposal providing for maintenance, repair, and service and upkeep of the equipment during the lease period, availability of the service and repair facilities, and source of replacement or repair parts;**
- (iv) The age and condition of the equipment to be leased; and**
- (v) Such other factors as the board deems essential to performance under the contract and dependability and reliability of the equipment to be furnished during the period of the lease.**

(3)(A) In determining the items of farm machinery and equipment to be acquired by purchase, the board may designate, if the board determines it to be within the better interest of the management of farm croplands of the Department of Correction, those items of farm machinery and equipment to be purchased. The board may restrict the bid to equipment produced by no fewer than two (2) manufacturers of each item of equipment.

(B) In making this determination, the board shall include, but not be limited to, a consideration of the following factors:

- (i) The types of farm machinery equipment now being used by the Department of Correction and the experience gained by the department in the use of the equipment for the purposes for which it is being purchased;**
- (ii) Availability of service and replacement and spare parts for the equipment;**
- (iii) Familiarity with the equipment of the employees or inmates responsible for the maintenance, repair, and upkeep thereof;**
- (iv) Compatibility of the farm machinery and equipment with repair and maintenance shop facilities available at the Department of Correction;**
- (v) Access to the dealer responsible for warranty service; and**
- (vi) Such additional factors as the board deems pertinent to the better interests of the management and operation of the farm crop lands of the Department of Correction.**

(C) (i) All purchases of farm machinery and equipment shall be in accordance with the applicable state procurement laws and rules and regulations promulgated thereunder.

(ii) Contracts for the providing or furnishing of service, repair, and replacement parts of farm machinery and equipment may include provision for the furnishing of a stated quantity of replacement and spare parts to be stored at the Department of Correction or may include contract prices for major or standard items of service or for the furnishing of replacement and spare parts at stated prices, which shall be at a discount from the published dealer price list, as the board may deem in the best interest of the department.

(iii) As an alternative, the board may elect to authorize the official to acquire replacement and spare parts on a need basis by following the applicable state procurement procedure in the acquisition of each item thereof as needed.

(4) (A) The official of the Department of Correction acting under the instruction and direction of the board and the Director of the Department of Correction shall be the sole and exclusive purchasing agent for the acquisition of farm machinery and equipment, whether by lease or purchase, and for the acquisition of repair services for farm machinery and equipment and repair and replacement parts therefor in the manner set forth in this section, and for the acquisition of those items covered in subsection (b) of this section.

(B) Nothing in this section shall prohibit the Department of Correction from requesting the State Procurement Director to make available the services of the Office of State Procurement in the acquisition of any item for which the official of the Department of Correction is exclusive purchasing agent under this section.

19-11-222. Exclusive jurisdiction over procurement.

(a) The State Procurement Director shall have exclusive jurisdiction over the procurement of the following commodities and services:

- (1) Items subject to Arkansas Constitution, Amendment 54;
- (2) Wholesale gasoline, oil, antifreeze, and related products;
- (3) Tires;
- (4) Tubes;
- (5) Passenger motor vehicles and trucks, except highway construction and highway maintenance equipment or any specialized type of equipment used in highway construction except as otherwise provided in this subchapter;
- (6) Paper products;
- (7) New and used school buses for state agencies and school districts; and
- (8) A purchasing card program to include implementation and administration.

(b) For purposes of this section:

- (1) "Printing" means the process of transferring images, by the use of standard industrial type printer ink, upon documents such as letterhead, envelopes, pamphlets, booklets, and forms;

(2) "Stationery" means imprinted letterhead and envelopes used by the General Assembly and other departments of state government to identify an individual department, agency, board, commission, etc.; and

(3) "Supplies" means paper and inks used to produce stationery.

19-11-223. Commodities and services under state contract.

(a) In addition to establishing a state contract for those commodities and services within the exclusive jurisdiction of the State Procurement Director under § 19-11-222, the director may award a state contract for other commodities and services in those instances where substantial savings may be effected by quantity purchasing of commodities or services in general use by several state agencies.

(b) State contracts shall be limited to those commodities on which, by virtue of custom or trade, substantial savings may be realized. In those instances where substantial savings are not effected, the letting of state contracts for those commodities shall be discontinued.

(c) Except for the procurement of commodities and services within the exclusive jurisdiction of the director, state agencies with agency procurement officials which can demonstrate a geographical or volume buying advantage need not participate in the state contract. However, if the commodities or services obtained are procured at a substantially higher price during the same state contract period, that agency must participate in the state contract upon expiration of the agency's contract.

(d) All state agencies, except as authorized in this section, which require commodities and services that are under state contract shall procure these commodities and services exclusively under such contract.

R1:19-11-223. Commodities and services under state contract.

(A) Notice. Notice of all term contracts initiated by the Office of State **Procurement** will be given to applicable agencies at least thirty (30) days prior to issuance of invitations for bids in order to invite comments and questions, and notice will be posted on Office of State Procurement website.

(B) Request for exclusion. State agencies having agency **procurement** officials may request exemption from a proposed state contract no less than ten (10) calendar days prior to issuance of an invitation for bids by submitting to the State **Procurement** Director a written justification for such exemption.

(C) Determination by State **Procurement** Director. Approval or denial of exemption from a state contract shall be made in writing by the State **Procurement** Director prior to issuance of the invitation for bids.

19-11-224. Interest and carrying charges.

State agencies, including exempt agencies, may enter into contracts which contemplate the payment of interest and late charges, but only when such late charges are incurred sixty (60) days after payment is due or carrying charges under such regulations as may be promulgated by the State Procurement Director.

R1:19-11-224. Interest, carrying charges, and termination fees.

(A) Limitations.

(1) Contracts may be entered into which contemplate the payment of interest or carrying charges only in the following conditions:

(a) when the interest or carrying charge is required because the term of the contract is extended over a period of time; and

(b) when a provision for termination of the contract is included in the contract, as provided in § 19-11-238(c) and the regulations promulgated pursuant thereto.

(2) Contracts may be entered into which contain a provision for the payment of the following charges on delinquent accounts: interest charges, carrying charges, late payment charges or any other charge which may be construed as a penalty, but only if incurred sixty (60) days after the due date.

(3) Service charges may be paid on credit card procurements.

19-11-225. Regulations

(a) Regulations shall be promulgated by the State Procurement Director in accordance with the applicable provisions of this subchapter and of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) No regulation shall change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of the regulation.

(c)(1) No clause which is required by regulation to be included shall be considered to be incorporated by operation of law in any state contract without the consent of both parties to the contract to the incorporation.

(2) The parties to the contract may give such consent to incorporation by reference at any time after the contract has been entered into and without the necessity of consideration passing to either party.

19-11-226. Recommendations.

(a) The State Procurement Director shall maintain a close and cooperative relationship with the using agencies.

(b)(1) The director shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to matters affecting the using agency.

(2) At any time, any using agency may make recommendations to the director, and the director may make recommendations to any using agency.

(3) The Director of the Department of Finance and Administration may make recommendations to the director.

19-11-227. Statistical data.

The State Procurement Director shall cooperate with the Office of Budget and the Office of Accounting in the preparation of statistical data concerning the procurement and disposition of all commodities and services, unless otherwise provided in this subchapter.

19-11-228. Methods of source selection.

Unless otherwise authorized by law, all contracts shall be awarded by competitive sealed bidding, pursuant to § 19-11-229, which refers to competitive sealed bidding, except as provided in:

- (1) Section 19-11-230, which refers to competitive sealed proposals;
- (2) Section 19-11-231, which refers to small procurements;
- (3) Section 19-11-232, which refers to proprietary or sole source procurements;
- (4) Section 19-11-233, which refers to emergency procurements;
- (5) Section 19-11-234, which refers to competitive bidding;
- (6) Section 19-11-262, which refers to multiple award contracts; or
- (7) Section 19-11-263, which refers to special procurements.

19-11-229. Competitive sealed bidding.

(a) Definition. "Competitive sealed bidding" means a method of procurement which requires:

- (1) Issuance of an invitation for bids with a purchase description and all contractual terms and conditions applicable to the procurement;
- (2) Public, contemporaneous opening of bids at a predesignated time and place;
- (3) Unconditional acceptance of a bid without alteration or correction, except as authorized in §§ 19-11-204 and 19-11-228 - 19-11-240;
- (4) Award to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids; and
- (5) Public notice.

R1:19-11-229. Competitive sealed bidding.

Definition.

*Invitations for bids shall be mailed, hand delivered, or conveyed in written **or electronic** form, to all parties on the applicable bidders mailing list in adequate time to allow response. If negotiations fail or you are unable to reach a negotiated adjustment with the apparent low bidder, the next lowest bidder can be contacted for the purposes of entering into negotiations.*

(b) Contracts exceeding an estimated purchase price of twenty-five thousand dollars (\$25,000) shall be awarded by competitive sealed bidding, unless a determination is made in writing by the agency procurement official or the State Procurement Director that this method is not practicable and advantageous and specifically states the reasons therefor. The director may provide, by regulation, that it is not practicable to procure specified types of commodities or services by competitive sealed bidding. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include whether:

(1) Purchase descriptions are suitable for award on the basis of the lowest evaluated bid price; and

(2) The available sources, the time and place of performance, and other relevant circumstances are appropriate for the use of competitive sealed bidding.

R2:19-11-229. Competitive sealed bidding.

Conditions for use.

*(a) Lease. All contracts for the lease of a commodity which exceed a cost of **twenty-five thousand dollars (\$25,000)** during the initial period of the contract shall be awarded on the basis of competitive sealed bids. All contracts for the lease of a commodity which do not exceed **twenty-five thousand dollars (\$25,000)** during the initial period of the contract but contain an option to purchase a commodity costing more than **twenty-five thousand dollars (\$25,000)** shall be awarded on the basis of competitive sealed bids. No lease duration including renewals can extend beyond a seven-year period. The term "lease" shall include rent.*

*(b) Purchase of commodities subject to the Arkansas Constitution, Amendment 54. Commodities subject to the Arkansas Constitution, Amendment 54 (printing, stationery and supplies) may be purchased only by the State **Procurement** Director or his designee.*

R3:19-11-229. Competitive sealed bidding.

Commodities and services which are not practicable to procure by competitive sealed bidding:

(a) Postage meter leases;

(b) Motor vehicle **rentals** (for thirty (30) days or less) may be procured by use of competitive bid procedures. All motor vehicle leases (**over thirty days**) must be approved by the State **Procurement** Director.

(c) Agricultural equipment leases for **180** days or less may be procured by use of competitive bid procedures.

R4:19-11-229. Competitive sealed bidding.

Leases.

*Lease of commodities on state contract. No contract greater than ninety (90) days for the lease of commodities on state contract shall be approved unless the State **Procurement** Director determines in writing that it is in the best interest of the state and states the reasons therefor.*

(c) Where it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced technical proposals to be followed by an invitation for bids limited to those bidders whose technical proposals meet the requirements set forth in the first invitation.

(d) Notice inviting bids shall be given not fewer than five (5) calendar days nor more than thirty (30) calendar days preceding the date for the opening of bids by publishing such notice at least one (1) time in at least one (1) newspaper having general circulation in the state or posting by electronic media, but in all instances adequate notice shall be given. The notice shall include a general description of the commodities or services to be procured and shall state where invitations for bid may be obtained. The notice shall also state the date, time, and place of bid opening.

(e) Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and open to public inspection.

R5:19-11-229. Competitive sealed bidding.

Bid submission.

(a) Bidders shall submit bids at the place and on or before the date and time set in the invitation for bids. Bids received after the date and time designated for bid opening are late bids and shall not be considered.

(b) All bids and any modifications to bids previously filed, received prior to the date and time fixed for opening bids, shall be kept secure and unopened. If a bid is submitted **and the invitation for bids number is** not clearly marked to indicate the date and time of bid opening, the State **Procurement** Director or agency **procurement** official shall make a reasonable attempt, **including, but not limited to, opening, marking and resealing,** to determine

which bid **the submission is** for, **resealing it** and shall open it **formally** at the date and time of that bid opening.

(c) Retrieval of a bid for purposes of modification or withdrawal shall be permitted prior to date and time of opening upon positive identification of a bona fide representative of the business.

R6:19-11-229. Competitive sealed bidding.

Bid opening. When practical, the names of the bidders and amounts of their bids may be read aloud. Except where it may be deemed impractical, due to the nature or complexity of an invitation for bids, an abstract of bids which contains the amount of each bid and the name of the bidder shall be prepared for each invitation for bids. An abstract of bids shall be retained in the bid file and shall be available for public inspection.

(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose and criteria affecting price such as life-cycle or total ownership costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that were not set forth in the invitation for bids.

R7:19-11-229. Competitive sealed bidding.

Bid evaluation.

(a) Those criteria that will affect the bid price and be considered in evaluation for award shall be stated in the bid and objectively measured, such as transportation costs and total or life cycle cost. Judgmental evaluation of commodities and services may be used in determining whether the commodity or service offered by a bidder meets the specification requirements of the procurement.

(b) The following matters shall be applicable to all invitations for bids issued, bids submitted, and contracts awarded for the purchase of commodities:

(1) Time discounts or cash discounts shall not be considered;

(2) Quantity discounts should be included in the price of the item. When not included in the item price, the discount shall be considered only if the **procurement** agency, or the agency for whose benefit the procurement has been undertaken, deems it to be in the state's best interest. The unit price shown on the contract shall be the net price, less the discount, unless otherwise indicated

in the bid;

(3) An award may be made to the lowest aggregate bidder for all items, group of items, or on an individual item basis, whichever is deemed to be in the state's best interest.

(4) Only signed, sealed bids delivered prior to the date and time of bid opening shall be accepted.

(c) Tie bids. In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications. An award will be made by lot (flip of a coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

(g) Correction of patent or provable errors in bids which do not prejudice other bidders, or withdrawal of bids, may be allowed only to the extent permitted under regulations promulgated by the State Procurement Director and upon written approval of the Attorney General or a designee of such officer. No award shall be made on the basis of a corrected bid, if the corrected bid exceeds the next lowest bid of a responsible bidder.

R8:19-11-229. Competitive sealed bidding.

Rejection. Grounds for rejection of bids include but shall not be limited to:

(a) failure of a bid to conform to the essential requirements of an invitation for bids;

(b) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;

(c) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;

(d) a bid imposing conditions which would modify the terms and conditions of the invitation for bids;

*(e) any bid determined by the **procurement** official in writing to be unreasonable as to price;*

(f) bids received from bidders determined to be nonresponsive bidders;

(g) failure to furnish a bid guarantee when required by an invitation for bids; and

*(h) any or all bids when the **procurement** official determines it to be in the best interest of the state.*

R9:19-11-229. Competitive sealed bidding.

(A) Correction or withdrawal of bids.

*(1) The State **Procurement** Director or agency **procurement** official may waive technicalities or minor irregularities in bids which do not affect the material substance of the bids when it is in the state's best interest to do so.*

(2) Amendments to bids shall be allowed if the amendments are in writing and signed, are received prior to the date and time of bid opening, and clearly indicate the date and time of bid opening and bid number.

*(3) If there is a suspected bid mistake, the State **Procurement** Director or agency **procurement** official may request confirmation of a bid and shall request the confirmation to be made in writing. The bid of any bidder who fails or refuses to clarify in writing within a reasonable time any matter contained in his bid shall be rejected. The written clarification shall become a part of the contract awarded on the basis of that bid.*

*(4) Bid prices shall be based on the unit prices and any correction of the price extension or of the price addition by the Office of State **Procurement** or state agency having an agency **procurement** official shall not be considered the correction of a bid. Bid prices shall not be increased after the date and hour of bid opening. A bid price may be decreased only after a determination has been made that the bid is low.*

(5) An otherwise low bidder may be permitted the opportunity to furnish other information requested in the invitation for bids and not supplied due to oversight, so long as it does not affect responsiveness.

(6) When a mistake in a bid is claimed by the vendor prior to award and the evidence is clear and convincing that a material mistake was made in the bid, and that due to such mistake the bid submitted was not the bid intended, the bidder may be permitted to withdraw his bid. Where the evidence is clear and convincing that a material mistake has been made in a bid after the award of a contract and the contractor will sustain a financial loss (a reduction or diminution in profit margin shall not be deemed a financial loss under this subsection) if required to perform the contract, the contract may be rescinded.

(B) Correction. Any negotiated adjustments, as defined in 19-11-229 (h), will not be considered the correction of a bid.

(h) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and

criteria set forth in the invitation for bids. In the event all bids exceed available funds as certified by the appropriate fiscal officer, the Director of the Office of State Procurement or the head of a procurement agency is authorized in situations where time or economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment of the bid price, including changes in the bid requirements, with the lowest responsive and responsible bidder, in order to bring the bid within the amount of available funds. All other bidders requesting to be notified of the award decision shall be promptly notified of the decision.

R10:19-11-229. Competitive sealed bidding.

(A) Award. After a reasonable bid evaluation period, the bid shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements and criteria set forth in the invitation for bids. All bids may be rejected if, after evaluation of the bids, including consideration of any clarifying or explanatory information submitted by the bidders, it is determined by the **procurement** official that no satisfactory bid has been received.

(B) Negotiation. In the event that negotiation is necessary, a bidder may be determined to be non-responsive if the bidder and agency are unable to reach a negotiated adjustment.

(C) Unsuccessful bid. In the event no bids are received or items bid do not meet specifications and it is apparent that further solicitation of bids would be futile, requested commodities may be purchased from any available source.

R11:19-11-229. Competitive sealed bidding.

Life cycle cost.

(a) Life cycle or total ownership costs may include but are not limited to, costs of operation, maintenance, repair, disposal and/or acquisition.

(b) Application. Life cycle cost formulas may be used for procurements. Certain specified commodities must be procured using life cycle cost formulas provided by the Office of State **Procurement**. For those specified commodities, the State **Procurement** Director shall provide formulas to be used in the evaluation of bids by the State **Procurement** Director, the agency **procurement** officials or the **procurement** agents

(i) An invitation for bid may be cancelled, or any or all bids may be rejected in writing by the State Procurement Director or the agency procurement official.

R12:19-11-229. Competitive sealed bidding.

*Cancellation of invitations for bids. A notice of cancellation shall be **sent** to all bidders on the bidders list and all bidders who have submitted bids. The bids will be returned if the bid is properly identified.*

R13:19-11-229. Ethical standards.

*In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than **\$5,000**: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."*

19-11-230. Competitive sealed proposals.

(a) **Definition. "Competitive sealed proposals" means a method of procurement which involves, but is not limited to:**

- (1) Solicitation of proposals through a request for proposals;**
- (2) Submission of cost or pricing data from the offeror where required;**
- (3) Discussions with responsible offerors whose proposals have been determined to be reasonably susceptible to being selected for award; and**
- (4) An award made to the responsible offeror whose proposal is determined in writing to be the most advantageous considering price and evaluation factors set forth in the request for proposals.**

(b) **When, under regulations promulgated by the State Procurement Director, the director determines in writing that the use of competitive sealed bidding is not practicable and advantageous, a contract may be awarded by competitive sealed proposals.**

(c) **Public notice of the request for proposals shall be given in the same manner as provided in § 19-11-229(d), which refers to public notice of competitive sealed bidding.**

(d) **The request for proposals shall indicate the relative importance of price and other evaluation factors.**

(e) **As provided in the request for proposals and under regulations, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall**

be no disclosure of any information derived from proposals submitted by competing offerors.

(f) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price, the evaluation factors set forth in the request for proposals, and the results of any discussions conducted with responsible offerors. No other factors or criteria shall be used in the evaluation.

(g) A competitive sealed proposal may be cancelled, or any or all proposals may be rejected in writing by the State Procurement Director or the agency procurement official.

R1:19-11-230. Competitive sealed proposals.

Conditions of use. Competitive sealed bidding is the preferred method of procurement; however, if it is not practicable and advantageous, competitive sealed proposals may be authorized as provided in § 19-11-230(b).

The key element in determining the necessity for utilization of the competitive sealed proposal method is the type of evaluation required. Where evaluation involves the relative abilities of bidders to perform, including the degree of technical or professional experience, and price is not the only consideration, use of competitive sealed proposals is appropriate. Further, where the types of supplies or services may require the use of comparative, judgmental evaluation, competitive sealed proposals is the appropriate procurement method.

R2:19-11-230. Competitive sealed proposals.

Evaluation. The evaluation shall be based on the evaluation factors set forth in the request for proposals. A written determination shall be made by the evaluator(s) stating the basis on which the [recommendation for](#) award was found to be most advantageous to the state.

R3:19-11-230. Negotiations.

a) [Negotiation of Competitive Sealed Bids should be authorized only in those cases where the best interests of the State are served. Only those procurement professionals who are trained in negotiation and procurement processes should conduct negotiations.](#)

b) [Prior to negotiation, a written justification authorizing negotiations must be signed by the Director of the Office of State](#)

Procurement or the head of a procurement agency. The justification must include:

1) Bid tabulation with indication of lowest responsive and responsible bidder.

2) Certification of available funds by agency chief fiscal officer.

3) Reason(s) precluding re-solicitation including but not limited to time constraints and economic impact to agency.

c) After approval to negotiate is granted, appropriate representatives shall proceed with negotiations and award recommendation. Appropriate representatives shall include purchasing staff and representatives from the original requesting unit.

d) Agency should investigate the factors affecting the price offered by the apparent low bidder to include but not be limited to cost, delivery requirements, warranty, location of supplier, volatile nature of goods or services requested and current economic condition of the market.

e) The agency must develop a plan to include at least:

1) The acceptable range of price, the desired "best" price and the highest acceptable price.

2) What adjustment may be made to delivery requirements that may affect price.

3) Acceptable adjustments in quantity.

4) A prioritized list of acceptable adjustments in specifications that may result in price reduction.

5) Timetable for completion of negotiation.

f) Negotiation plan shall not be revealed to bidder(s) nor made available for public review until after award.

g) An acceptable negotiated contract shall be signed and in writing listing agreed upon terms, conditions, specifications, quantities and pricing.

h) If a negotiated contract can not be developed, the bidder may be declared non-responsive and time permitting, the negotiation process may be repeated with the next low bidder.

i) If negotiations do not result in an acceptable contract, the Director or head of a procurement agency may rebid or elect to procure by sole source method (19-11-232) or special procurement (19-11-263).

R4:19-11-230. Ethical standards.

In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than \$5,000: "It shall be a breach of

ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."

19-11-231. Small procurements.

Any procurement not exceeding the amount under § 19-11-204(12), which refers to small procurements, may be made in accordance with small procurement procedures promulgated by the State Procurement Director. However, procurement requirements shall not be artificially divided so as to constitute a small procurement under this section.

*R1:19-11-231. Small **Procurements**.*

Conditions for use.

*(a) Lease. All state agencies may lease commodities **with the exclusion of vehicles (See § 22-8-102)** where the cost does not exceed **five thousand dollars (\$5,000)** during the initial period of the contract without seeking competitive bids, provided the lease does not contain an option to purchase. Such leases may not be renewed beyond accumulated expenditures of **five thousand dollars (\$5,000)**.*

(b) Purchase of commodities subject to Amendment 54 to the Arkansas Constitution. Purchase of commodities subject to Amendment 54 to the Arkansas Constitution must be procured in accordance with competitive bidding and competitive sealed bidding procedures. (See § 19-11-222 (b) for definitions of printing, stationery, and supplies.)

19-11-232. Proprietary or sole source procurements.

A contract may be awarded for a required or designated commodity or service to a sole or mandatory supplier when, under regulations promulgated under this subchapter, the State Procurement Director, the head of a procurement agency, or a designee of either officer above the level of agency procurement official determines in writing that it is not practicable to use other than the required or designated commodity or service. Unless a written determination is made that there is only one (1) source for the required or designated commodity or service, efforts shall be made to obtain price competition.

R1:19-11-232. Proprietary or sole source procurements.

(A) General. Sole source procurements shall be those

procurements which, by virtue of the performance specification, are available from a single source. Brand name or design specifications shall not be sufficient explanation for sole source. Such procurements may include but shall not be limited to:

(1) requirements of performance compatibility with existing commodities or services; or

(2) repairs involving hidden damage.

(B) Approval. Request for approval shall be made in writing and shall include:

(1) a copy of the purchase order; and

(2) an explanation of sole source procurement, to include:

(a) listing of the commodities/services to be procured

(b) rationale for the procurement of those commodities/services to the exclusion of all others

(c) summary of other similar commodities/service providers and why they were inadequate

(d) the "Contract and Grant Disclosure and Certification Form" required by Governor's Executive Order 98-04.

*(C) Procurements under this section shall be approved in advance by the head of a state agency having an agency **procurement** official or the State **Procurement** Director for all other state agencies, or a designee of either officer above the level of agency **procurement** official.*

R2:19-11-232. Ethical standards.

*In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than **\$5,000**: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."*

19-11-233. Emergency procurements.

The State Procurement Director, the head of a procurement agency, or a designee of either officer may make or authorize others to make emergency procurements as defined in § 19-11-204(4) and in accordance with regulations promulgated by the director.

R1:19-11-233. Emergency procurements.

(A) Bids. The state agency must, at a minimum, receive three (3) competitive bids unless the emergency is critical. The quotation abstract must show the names of at least three (3) firms contacted in attempting to obtain competition.

(B) Approval. All emergency procurements shall be approved in advance by the State **Procurement** Director, the head of a **procurement** agency, or a designee of either officer. Where time or circumstance does not permit prior approval, approval must be obtained at the earliest practical date. Requests for approval shall be made in writing and shall include:

- (1) a copy of the purchase order;
- (2) a copy of the quotation abstract; and
- (3) a written explanation of the emergency.

(C) Tie bids. In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications. An award will be made by lot (flip of a coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the state of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

R2:19-11-233. Ethical standards.

*In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than **\$5,000**: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."*

19-11-234. Competitive bidding.

(a)(1) Competitive bidding is a method of procurement which requires obtaining bids by:

- (A) Direct mail request to prospective bidders and obtaining written bids;**
or
(B) Telephone; or
(C) Telegraph; or
(D) Written form; or
(E) Electronic media.

(2) A competitive bid form authorized by the State Procurement Director must be completed.

(3) If three (3) competitive bids are not obtained on purchases when bids are required, the form must show the names of at least three (3) firms contacted in attempting to obtain competition or show the reason three (3) firms were not contacted.

(4) Only firms which sell the type of commodity or service to be procured shall be contacted. The purchase procedures outlined in this section shall not apply to commodities and services under state contract.

(b) Contracts in which the purchase price exceeds five thousand dollars (\$5,000) and is less than or equal to twenty-five thousand dollars (\$25,000) may be awarded by use of competitive bidding procedures. However, in any such instances, competitive sealed bidding is permitted.

R1:19-11-234. Competitive bidding.

Conditions for use.

(a) Purchase of commodities subject to the Arkansas Constitution, Amendment 54. The commodities subject to Amendment 54 to the Arkansas Constitution are printing, stationery, and supplies. (See also § 19-11-222(b).)

(1) Supplies. All state agencies may purchase certain supplies subject to Amendment 54 under the following conditions:

{i} if the cost of the commodity is **twenty-five thousand dollars (\$25,000)** or less, the state agency must obtain, wherever possible, at least three (3) **written** competitive bids.

(2) Printing and stationery. The State **Procurement** Director or his designee shall purchase all printing and stationery subject to Amendment 54 under the following conditions:

{i} if the cost of the commodity is **twenty-five thousand dollars (\$25,000)** or less, the State **Procurement** Director or his designee must obtain, wherever possible at least three (3) **written** competitive bids.

R2:19-11-234. Competitive bidding.

Leases.

(a) Lease of commodities on state contract. No contract greater than ninety (90) days for the lease of commodities on state contract shall be approved unless the State **Procurement** Director determines in writing that it is in the best interest of the state and states the reason therefor.

(b) All contracts for the lease of a commodity which exceed a cost of **five thousand dollars (\$5,000)** but are less than **twenty-five thousand dollars (\$25,000)** during the initial period of the contract shall be awarded on the basis of competitive bidding. A

*purchase option and/or lease renewal is allowed as long as the accumulated expenditure does not exceed **twenty-five thousand dollars (\$25,000)**.*

(c)(1) All procurements shall be awarded to the responsive and responsible bidder who has submitted the lowest bid that meets the requirements, criteria, and specifications. Delivery time required must be reasonable and consonant with current industry norms.

(2) Complete justification must be given if award is made to other than the low bidder.

R3:19-11-234. Competitive bidding.

Life cycle cost.

(a) Life cycle or total ownership costs may include but are not limited to costs of operation, maintenance, repair, disposal and/or acquisition.

*(b) Application. Life cycle cost formulas may be used for procurements. Certain specified commodities **may** be procured using life cycle cost formulas provided by the Office of State **Procurement**. For those specified commodities, the State **Procurement** Director **may** provide formulas to be used in the evaluation of bids by the State **Procurement** Director, the agency **procurement** officials or the **procurement** agents.*

R4:19-11-234. Competitive bidding.

*Cancellation. Bids may be cancelled by the State **Procurement** Director, agency **procurement** official or **procurement** agent prior to contract award. Notice of cancellation shall be given to all bidders who have submitted bids.*

(d)(1) Copies of the competitive bid form and the purchase order must be forwarded to the Office of State Procurement within the first ten (10) days of each month by all state agencies not having agency procurement officials.

(2) The director or agency procurement official shall keep a record of all procurements requiring bids less than or equal to twenty-five thousand dollars (\$25,000). An abstract of the bids shall be retained in the bid file and shall be available for public inspection.

(e) Repeated small quantity procurements to circumvent the competitive bid limits or failure to obtain competitive bids without justification shall constitute a violation of these procedures and shall result in withdrawal of the state agency's competitive bid privileges.

R5:19-11-234. Competitive bidding.

Rejection. Grounds for rejection of bids include but shall not be limited to:

(a) failure of a bid to conform to the essential requirements of an invitation for bids;

(b) any bid which does not conform to the specifications contained or referenced in any invitation for bids unless the items offered as alternatives meet the requirements specified in the invitation;

(c) any bid which fails to conform to a delivery schedule established in an invitation for bids, unless the invitation for bids contains provisions for acceptance of offers with alternative delivery schedules;

(d) a bid imposing conditions which would modify the terms and conditions of the invitation for bids;

*(e) any bid determined by the **procurement** official in writing to be unreasonable as to price;*

(f) bids received from bidders determined to be nonresponsible bidders;

(g) failure to furnish a bid guarantee when required by an invitation for bids; and

*(h) any or all bids when the **procurement** official determines it to be in the best interest of the state.*

R6:19-11-234. Competitive bidding.

Tie bids. In the event the lowest prices offered result in a tie bid, the person responsible for awarding a contract must ensure that all offers meet specifications. An award will be made by lot (flip of the coin). The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the state of Arkansas. Documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties.

R7:19-11-234. Ethical standards.

*In accordance with § 19-11-708(a), (b), and (c), the following statement must be conspicuously set forth in all contracts and solicitations costing more than **\$5,000**: "It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees of bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business."*

19-11-235. Responsibility of bidders and offerors

(a) A determination of nonresponsibility of a bidder or offeror shall be made in accordance with regulations promulgated by the State Procurement Director. A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. The unreasonable failure of a bidder or offeror to promptly supply information in connection with such an inquiry may be grounds for a determination of nonresponsibility with respect to such bidder or offeror. If a bidder or offeror is determined to be nonresponsible, the reasons therefor shall be included in the determination.

R1: 19-11-235. Nonresponsibility.

(A) (1) Determination of responsibility is accomplished prior to award of a contract.

(2) A nonresponsible bidder or offeror is one who has been determined through evaluation of bid/offer to lack the capability, integrity and/or reliability to fully perform the contract.

(B) Determination of responsibility may include, but not be limited to some or all of the following:

(1) the ability, capacity and skill to perform the contract or provide the service;

(2) the responsibility and experience of the business;

(3) the quality of performance on previous contracts or services;

(4) the previous and existing compliance by the business with laws relating to the contract or services; and

(5) the sufficiency of the financial resources and ability of the bidder to perform the contract or provide the services.

(b) Except as otherwise provided by law, information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the Office of State Procurement or the procurement agency without prior written consent by the bidder or offeror. This section is not intended to prohibit the office from disclosing such information to the Governor, the Attorney General, or the Director of the Department of Finance and Administration when any of those officers deems it necessary.

(c) The State Procurement Director or the agency procurement official may require the posting of a bid bond, a performance bond, or a similar assurance by any actual or prospective bidder, offeror, or contractor, under regulations promulgated under this subchapter.

R2:19-11-235. Bonds.

Bonds.

(a) General. Bidders shall submit bid bonds or performance

*bonds or similar assurances when required by the terms and conditions of the invitation for bids, solicitation or request for proposals, as obligee with surety satisfactory to the **procurement** agency, in a sum not to exceed one hundred percent (100%) of the contract price.*

(b) Award. A bid shall not be awarded to any bidder who fails or refuses to provide a bond when required by the invitation for bids.

*(c) Default. A contractor may be declared in default of his contract with the state, and his bond forfeited, when it is determined by the **procurement** official that the contractor is in breach of the terms and conditions of the contract.*

19-11-236. Prequalification of suppliers

(a) The State Purchasing Director may provide for prequalification of suppliers as responsible prospective contractors for particular types of commodities and services. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified suppliers.

(b) Prequalifications shall not foreclose a written determination:

(1) Between the time of the bid opening or receipt of offers and making of an award that a prequalified supplier is not responsible; or

(2) That a supplier who is not prequalified at the time of bid opening or receipt of offers is responsible.

19-11-237. Cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee contracts.

As used in this subchapter, unless the context otherwise requires:

The cost-plus-a-percentage-of-cost and cost-plus-a-fixed-fee system may be used under the authority of the State Procurement Director when:

(1) There exists no other economically practicable price arrangement to secure the commodity; or

(2) A cost saving may be proved over the least expensive alternative; or

(3) The pricing schedule involved is tied to an industry standard or other reliable system of cost prediction.

19-11-238. Multiyear contracts.

(a) Specified Period. Unless otherwise provided by law, a contract for commodities or services may be entered into for periods of not more than seven (7) years if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds therefor.

(b) Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing that:

(1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) Such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement; and

(3) In the event of termination for any reason, the contract provides for cessation of services and/or surrender by the state of the commodities and repayment to the state of any accrued equity.

(c) Termination Due to Unavailability of Funds in Succeeding Years. Original terms of such multiyear contracts shall terminate on the last day of the current biennium, and any renewals by the state based upon continuing appropriation shall not exceed the next succeeding biennium. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year shall be terminated and the contractor may be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the commodities or services delivered under the contract. The cost of termination may be paid from:

(1) Appropriations currently available for performance of the contract;

(2) Appropriations currently available for procurement of similar commodities or services and not otherwise obligated; or

(3) Appropriations made specifically for the payment of such termination costs.

19-11-239. Finality of determinations.

The determinations required by § 19-11-229(h), which refers to competitive sealed bidding, award; § 19-11-230(b), which refers to competitive sealed proposals, conditions for use; § 19-11-230(f), which refers to competitive sealed proposals, award; § 19-11-232, which refers to proprietary or sole source procurements; § 19-11-233, which refers to emergency procurements; § 19-11-234, which refers to competitive bidding; § 19-11-235, which refers to responsibility of bidders and offerors, determination of responsibility; § 19-11-238(b), which refers to multiyear contracts, determination prior to use; and § 19-11-263, which refers to special procurements, are final and conclusive, unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

19-11-240. Reporting of suspected collusion.

(a) Notification to the Attorney General. When for any reason collusion is suspected among any bidders or offerors, a written notice of the relevant facts shall be transmitted to the Attorney General.

(b) Retention of All Documents. All documents involved in any procurement in which collusion is suspected shall be retained until the Attorney General gives

notice that they may be destroyed. All retained documents shall be made available to the Attorney General or a designee upon request and proper receipt therefor.

19-11-241. Specifications.

(a) **Definition.** "Specification" means any technical or purchase description or other description of the physical or functional characteristics, or of the nature, of a commodity or service. It may include a description of any requirement for inspecting, testing, or preparing a commodity or service for delivery.

(b) The State Procurement Director shall promulgate regulations governing the preparation, maintenance, and content of standard and nonstandard specifications for commodities and services procured by the Office of State Procurement.

R1:19-11-241. Issuance of standard specifications.

(A) *Initiating development of a standard specification. The State **Procurement** Director shall regularly review all state procurement needs to ascertain the commodities or services for which standard specifications can be developed. Any using agency may request the State **Procurement** Director to develop a standard specification for any commodity or service. The State **Procurement** Director shall develop standard specifications requested by a using agency unless the State **Procurement** Director or the designee of such officer determines that a standard specification need not be developed for that item.*

(B) *Development of the initial draft of a standard specification. In developing the initial draft of a standard specification, the State **Procurement** Director shall consider the recommendations of all concerned using agencies and shall, to the extent practicable, make use of similar specifications of the federal government, other state and local governments, and professional, commercial, and trade organizations. In developing that draft, it also may consider the benefits of simplification, standardization, and interchangeability of equipment and spare parts.*

(C) *Review of draft standard specifications.*

(1) *Distribution for comments. Copies of all draft standard specifications shall be distributed with a request for comments. Distribution shall be made, to the extent practicable, to known suppliers of similar commodities or services, concerned state agencies, and trade, scientific, or technical organizations known to be concerned with similar commodities or services. The State **Procurement** Director may give such further public notice of the preparation of a draft standard specification as such officer deems appropriate.*

(2) Availability of comments. All comments submitted shall be placed in a standard specifications file and made available for inspection.

(D) Preparation of final standard specifications. After opportunity for comment, the State **Procurement** Director may distribute additional drafts for comments or prepare the final standard specification.

(E) Revisions of standard specifications. The State **Procurement** Director shall develop revisions to standard specifications in the same manner as a standard specification unless such director determines, in writing, that the revision would not change a significant technical requirement of the specification and would not significantly reduce competition. If such written determination is made, the revision may be developed.

(F) Standard specifications file. The State **Procurement** Director shall maintain a file of every standard specification and any revision thereof.

R2:19-11-241. Issuance of nonstandard specifications.

(A) Initiating development of a nonstandard specification. Nonstandard specifications shall be originated upon an agency's written request and after approval by the State **Procurement** Director or the designee of such officer. A nonstandard specification will be developed for a commodity or service that fails to meet those requirements which would necessitate a statewide standard specification but that needs standardization in order to meet a requirement of one or more agencies.

(B) Development of the initial draft of a nonstandard specification. In developing a nonstandard specification, the State **Procurement** Director may consider recommendations of the requesting agency and utilize federal, state, local, professional, commercial, and trade organization information to the extent practicable and consistent with agency needs.

(C) Review of draft nonstandard specifications.

(1) Distribution for comment. Copies of all draft nonstandard specifications shall be forwarded to the requesting agency and to known suppliers of similar commodities or services, to the extent practicable, with a request for comment.

(2) Availability of comments. All comments submitted shall be placed in a nonstandard specification file and made available for inspection.

(D) Preparation of final nonstandard specification. After opportunity for comment, the State **Procurement** Director or designee of such officer will cause the nonstandard specification to be finalized and copies forwarded to the requesting agency.

(E) *Revision or cancellation of nonstandard specifications.* Revision or cancellation may be initiated upon written request by a using agency unless the State **Procurement** Director or designee of such officer determines that the revision or cancellation would not serve the best interests of other using agencies.

(F) *Specifications file.* The State **Procurement** Director shall maintain a file for each nonstandard specification and any revisions thereof.

R3:19-11-241. Issuance of specifications.

Restrictive specifications. A specification may be drafted which describes a product which is proprietary to one manufacturer only where there is a requirement for specifying a particular design or make of product due to factors of compatibility, standardization, or maintainability.

R4:19-11-241. Issuance of specifications.

Qualified products list.

(a) *Restrictions on use.* A specification for commodities may include a qualified products list only when the State **Procurement** Director has approved in writing the written determination of the agency **procurement** official or Office of State **Procurement** that:

(1) *the interests of the state require assurance before award that the desired commodity is satisfactory; and*

(2) *the cost or the time required to test before award would be excessive.*

(b) *Notice of intent to adopt a qualified products list.*

Whenever it is determined to include a qualified products list in any specification or to adopt such a list, prompt notice of the intent shall be given to all reasonably known makers and suppliers of the affected commodity. Such notice shall describe all requirements for achieving qualification.

(c) *Written records of evaluation.* Detailed written records shall be made of the evaluation of any and all commodities offered for inclusion on any qualified products list. Except for records which contain trade secrets or other proprietary information, those records shall be made available for inspection by any member of the public upon request.

(c) Maximum Practicable Competition. All specifications shall be drafted so as to assure the maximum practicable competition for the state's actual requirements.

19-11-242. Commodity management regulations. (See Part 2 Marketing and Redistribution)

19-11-243. Proceeds from surplus commodities. (See Part 2 Marketing and Redistribution)

19-11-244. Resolution of protested solicitations and awards.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the State Procurement Director or the head of a procurement agency. The protest shall be submitted in writing within fourteen (14) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto.

(b) The director, the head of a procurement agency, or a designee of either officer shall have the authority, prior to the commencement of an action in court or any other action provided by law concerning the controversy, to settle and resolve a protest of an aggrieved bidder, offeror, or contractor, actual or prospective, concerning the solicitation or award of a contract. This authority shall be exercised in accordance with laws governing the Arkansas State Claims Commission and the regulations promulgated by the director.

(c) If the protest is not resolved by mutual agreement, and after reasonable notice to the person involved and reasonable opportunity for that person to be heard, the director, the head of a procurement agency, or a designee of either officer shall promptly issue a decision in writing. The decision shall state the reasons for the action taken.

R1:19-11-244.Decision.

After submittal of a timely protest and prior to issuance of a written decision to that protest, the protestor will be afforded an opportunity, in an informal setting, to meet with the Director or head of a procurement agency to explain the issues giving rise to the protest.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished within five (5) days after it is written to the protestant and any other party intervening.

(e) A decision under subsection (c) of this section shall be final and conclusive.

(f) In the event of a timely protest under subsection (a) of this section, the state shall not proceed further with the solicitation or with the award of the contract until the director or the head of a procurement agency makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.

(g) Award of Costs to Protestants. When the protest is sustained and the successfully protesting bidder or offeror was denied the contract award, the

protesting bidder or offeror may be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs, through the commission.

R2:19-11-244. Authority to resolve protested solicitations and awards.

Authority to resolve protested solicitations and awards.

*(a) Counsel. Before agreeing to settle any protest by the award of costs, the State **Procurement** Director or head of a **procurement** agency shall consult the Attorney General or legal counsel.*

*(b) Award. The award of costs shall be allowed only to compensate a party for reasonable expenses incurred in **preparation and submission of a bid or proposal** for which that party was wrongfully denied a contract award, and shall be allowed only by filing a claim with the Claims Commission for the agreed costs.*

*(c) Costs. The costs which are allowable shall be those which the party is able to prove that are **incurred in preparation and submission of the bid or proposal** in question. No party can recover profit which it anticipates would have been made if that party had been awarded the contract. Attorney's fees associated with the filing and prosecution of the protest are not recoverable.*

19-11-245. Debarment or suspension.

(a) Applicability. This section applies to debarment for cause from consideration for award of contracts, or a suspension from such consideration during an investigation, where there is probable cause for such a debarment.

(b) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the State Procurement Director or the head of a procurement agency shall have authority to debar a person for cause from consideration for award of contracts, provided that doing so is in the best interests of the state. The debarment shall not be for a period of more than three (3) years. The same officer shall have authority to suspend a person from consideration for award of contracts, provided that doing so is in the best interests of the state and there is probable cause for debarment. The suspension shall not be for a period exceeding three (3) months. The authority to debar or suspend shall be exercised in accordance with regulations promulgated by the director.

(c) The causes for debarment or suspension because of unsuitability for award of a contract shall be set forth in regulations promulgated by the director.

R1:19-11-245. Decision.

Prior to any department hearing the suspended contractor will be afforded an opportunity in an informal setting to meet with the Director or head of a procurement agency to discuss the circumstances which led to the suspension and to potentially reach a settlement.

(d) The director or the head of a procurement agency shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(e) Notice of Decision. A copy of the decision under subsection (d) of this section shall be mailed or otherwise furnished within five (5) days after it is written to the debarred or suspended person and any other party intervening.

(f) Finality of Decision. A decision under subsection (d) of this section shall be final and conclusive.

R2:19-11-245. Authority to debar or suspend.

Authority to debar or suspend.

(a) General. Any bidder or contractor to the state of Arkansas who, except for good cause shown, shall have done any of the matters listed in subsection (2) may be suspended or debarred from consideration for award of contracts.

(b) Causes for debarment or suspension. The causes for debarment or suspension include, but are not limited to, the following:

(1) conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(3) conviction under state or federal antitrust statutes arising out of submission of bids or proposals;

*(4) violation of contract provisions, as set forth below, of a character which is regarded by the State **Procurement** Director or the head of a **procurement** agency to be so serious as to justify debarment action:*

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory

performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;

*(5) continuous failure to post bid or performance bonds, or to provide alternate bid or performance guarantee in the form acceptable to the **procurement** agency in lieu of a bond, as required by an invitation for bids or a solicitation for proposals;*

(6) substitution of commodities without the prior written approval of the contracting authority;

*(7) failure to replace inferior or defective commodities within a reasonable time after notification by the **procurement** agency or the agency to which such commodity has been delivered;*

(8) refusal to accept a contract awarded pursuant to the terms and conditions of the contractor's bid;

(9) falsifying invoices, or making false representations to any state agency or state official, or untrue statements about any payment under a contract or to procure award of a contract, or to induce a modification in the price or the terms of a contract to the contractor's advantage;

(10) collusion or collaboration with another bidder or other bidders in the submission of a bid or bids for the purpose of lessening or reducing competition;

(11) falsifying information in the submission of an application for listing on a state bidders list;

*(12) any other cause the State **Procurement** Director or head of a **procurement** agency determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by any other governmental entity for any cause; and*

(13) violation of the ethical standards set forth in § 19-11-708.

*(c) Suspension. In the event a bidder is suspended, a written determination shall be made by the State **Procurement** Director or **head of a procurement agency** concerning the facts of any allegation or claim that a bidder has done any action in subsection (2), and shall be sent to the bidder at the address shown in the **procurement** agency's records.*

*(d) Debarment. Prior to any action for debarment, the Office of State **Procurement** or agency **procurement** official shall notify the bidder of the opportunity for a hearing fourteen (14) days prior to said hearing. Such notification shall state the facts of any allegation or claim. The State **Procurement** Director or head of a **procurement** agency shall consult with the Attorney General or legal counsel prior to debarring a person for cause from consideration for award of contracts.*

(e) Decision. The written decision concerning debarment shall state the reasons for the action taken and shall inform the

debarred person involved of his rights to judicial review.

(f) Other remedies. The procedures in this section shall not preclude the taking of other action by the state, based on the same facts, as may be otherwise available, either at law or in equity.

*(g) Distribution of decisions. All agency **procurement** officials shall send a copy of any determination of debarment to the Office of State **Procurement** and the Office of State **Procurement** shall send a copy of its determinations to each agency **procurement** official.*

19-11-246. Resolution of contract and breach of contract controversies.

(a) Applicability. This section applies to controversies between the state and a contractor which arise under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modifications or rescission.

(b) The State Procurement Director, the head of a procurement agency, or a designee of either officer is authorized, prior to commencement of an action in a court or any other action provided by law concerning the controversy, to settle and resolve a controversy described in subsection (a) of this section. This authority shall be exercised in accordance with the law governing the Arkansas State Claims Commission and the regulations promulgated by the director.

(c) If such a claim or controversy is not resolved by mutual agreement, and after reasonable notice to the person involved and reasonable opportunity for that person to be heard, the director, the head of a procurement agency, or the designee of either officer shall promptly issue a decision in writing. The decision shall state the reasons for the action taken.

(d) A copy of the decision under subsection (c) of this section shall be mailed or otherwise furnished immediately to the contractor.

(e) The decision under subsection (c) of this section shall be final and conclusive.

(f) If the director, the head of a procurement agency, or the designee of either officer does not issue the written decision required under subsection (c) of this section within one hundred twenty (120) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision has been received.

R1:19-11-246. Authority to resolve contract and breach of contract controversies.

*(A) General. Any contractor who is determined in writing by the **State Procurement Director, the head of a procurement agency, or a designee of either officer** to be in breach of any of the terms and conditions of a contract held by such contractor shall, at the discretion of the **procurement** official, be declared in default*

and such contract may be terminated as a result of such default.

Declaration of default may only be determined by the procurement official who awarded the contract, and only after the contractor has been afforded the opportunity, in an informal setting, to meet with the Director or head of a procurement agency to explain the circumstances giving rise to the potential breach of contract.

(B) Default. A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to, failure to perform the contract according to its terms, conditions and specifications, or failure to make delivery within the time specified or according to a delivery schedule fixed by the contract.

(C) Contractor's liability. The contractor and/or his surety, if a performance or payment bond has been required under the contract, shall be jointly and severally liable to the state for any and all loss or damage as provided in the contract between the state and the contractor as a result of the contractor's default; provided, however, that a contractor's surety's liability shall not exceed the final sum specified in the contractor's bond.

19-11-247. Remedies for unlawful solicitation or award.

(a) The provisions of this section apply where it is determined upon any review provided by law that a solicitation or award of a contract is in violation of law.

(b) If prior to award it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

(1) Cancelled; or

(2) Revised to comply with the law.

(c) If after an award it is determined that a solicitation or award of a contract is in violation of law, then in addition to or in lieu of other remedies provided by law:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(A) The contract may be ratified and affirmed if it is determined that doing so is in the best interests of the state; or

(B) The contract may be terminated;

(2) If the person awarded the contract has acted fraudulently or in bad faith:

(A) The contract may be declared null and void; or

(B) The person awarded the contract may be directed to proceed with performance of the contract and pay such damages, if any, as may be appropriate if such action shall be in the best interests of the state.

19-11-248. Finality of administrative determinations.

In any judicial action or other action provided by law, factual or legal determinations by employees, agents, or other persons appointed by the state

shall have no finality and shall not be conclusive, notwithstanding any contract provision, regulation, or rule of law to the contrary, except to the extent provided in:

- (1) Section 19-11-239, which refers to finality of determinations;
- (2) Section 19-11-244(e), which refers to resolution of protested solicitations and awards, finality of decision;
- (3) Section 19-11-245(f), which refers to debarment or suspension, finality of decision; and
- (4) Section 19-11-246(e), which refers to resolution of contract and breach of contract controversies, finality of decision.

19-11-249. Cooperative purchasing.

Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any commodities or services with one (1) or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

R1:19-11-249. Cooperative Purchasing.

*Cooperative purchasing contracts or agreements must be approved by the Director of the Office of State **Procurement** prior to being entered into by a state public procurement unit.*

19-11-250. Sale, etc., of commodities.

Any public procurement unit by agreement with another public procurement unit may sell to, acquire from, or use any commodities belonging to or produced by another public procurement unit or external procurement activity independent of the requirement of §§ 19-11-204, 19-11-228 - 19-11-240, and 19-11-263, which refer to source selection and contract formation, and §§ 19-11-205, 19-11-242, and 19-11-243, which refer to commodity management.

R1:19-11-250. Sale, acquisition or use of commodities by a public procurement unit.

Department of Correction Industry Program.

(a) The Department of Correction is authorized to enter into contracts, purchase orders, compacts or agreements with the appropriate officials of agencies of other states or of the federal government for the buying and selling of raw materials, goods and products produced by and belonging to their respective institutions.

The buying and selling of these materials will be for the purpose of producing finished products through a correctional industries program.

*(b) The Department of Correction shall be governed by the Arkansas Code of 1987 Annotated, § 12-30-101 et seq., § 12-30-201 et seq., and other appropriate laws when utilizing the provisions of these regulations. The **procurement** official/agent for the Department of Correction is authorized to enter into contracts, orders, compacts or agreements pursuant to these regulations.*

*(c) Copies of all such contracts, orders, compacts or agreements entered into under the provisions of this regulation shall be filed with the Office of State **Procurement** and a complete set of books and records shall be kept by the Department of Correction with respect to all transactions, deliveries, and obligations under each contract, compact, or agreement. Copies of these books and records shall be filed monthly with the Office of State **Procurement**.*

(d) All records and reports required pursuant to this regulation shall be available to public inspection during normal business hours, and shall be retained for a period of three (3) years after completion of the contract, compact, or agreement.

19-11-251. Intergovernmental use of commodities or services.

Any public procurement unit may enter into an agreement, independent of the requirements of §§ 19-11-204, 19-11-228 - 19-11-240, and 19-11-263 which refer to source selection and contract formation, and §§ 19-11-205, 19-11-242, and 19-11-243, which refer to commodity management, with any other public procurement unit or external procurement activity for the intergovernmental use of commodities or services under the terms agreed upon between the parties and in accordance with the rules and regulations promulgated under this subchapter.

R1: 19-11-251. Intergovernmental agreements.

A) Intergovernmental agreements should include at a minimum:

- 1) Scope of work to be accomplished;*
- 2) Amount of compensation (if any);*
- 3) Delineation of responsibilities and duties of each entity;*
- 4) Term of agreement; and*
- 5) Authorized signatures from each entity.*

B) All intergovernmental agreements will be reviewed by the Office of State Procurement prior to implementation.

19-11-252. Rules and regulations.

The State Procurement Director may promulgate reasonable rules and regulations pertaining to the sale or acquisition of any commodities or services belonging to or produced by another public procurement unit or external procurement activity as authorized in §§ 19-11-206 and 19-11-249 - 19-11-258.

19-11-253. Joint use of facilities.

Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

19-11-254. State information services.

(a) Upon request, the State Procurement Director may make available to public procurement units the following services, among others:

- (1) Standard forms;**
- (2) Printed manuals;**
- (3) Product specifications and standards;**
- (4) Quality assurance testing services and methods;**
- (5) Qualified products lists;**
- (6) Source information;**
- (7) Common use commodities listings;**
- (8) Supplier prequalification information;**
- (9) Supplier performance ratings;**
- (10) Debarred and suspended bidders lists;**
- (11) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and**
- (12) Contracts, or published summaries thereof, including price and time of delivery information.**

(b) The director may enter into contractual arrangements and publish a schedule of fees for the services provided under this section.

19-11-255. Use of payments received.

All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying services shall be available to the supplying public procurement unit.

19-11-256. Compliance by public procurement units.

(a) Procurement in Accordance with Requirements. Where the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements of this subchapter, any public procurement unit participating in such a purchase shall be deemed to have complied with this subchapter.

(b) Where a public procurement unit or external procurement activity not subject to this subchapter administers a cooperative purchase for a public procurement unit subject to this subchapter, then the State Procurement Director must determine in writing that the procurement system and remedies procedures of the public procurement unit or external procurement activity administering the procurement substantially meet the requirements of this subchapter.

19-11-257. Review of procurement requirements.

To the extent possible and consistent with efficiency, the State Procurement Director shall collect information concerning the type, cost, quality, and quantity of commonly used commodities or services being procured or used by state public procurement units. The director may also collect such information from local public procurement units. The director may make available all such information to any public procurement unit upon request.

19-11-258. Contract controversies.

Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with §§ 19-11-244 - 19-11-248, which refer to legal and contractual remedies, where the administering public procurement unit is a state public procurement unit or otherwise subject to §§ 19-11-244 - 19-11-248.

19-11-259. Preferences among bidders.

(a) Definitions. The definitions in this subsection shall not be applicable to other sections of this subchapter. As used in this section, unless the context otherwise requires:

- (1) "Public agencies" shall mean all counties, municipalities, and political subdivisions of the state;**
- (2) "Lowest qualified bid" shall mean the lowest bid which conforms to the specifications and request for bids;**
- (3) "Firm resident in Arkansas" shall mean any individual, partnership, association, or corporation, whether domestic or foreign, who:**
 - (A) Maintains at least one (1) staffed office in this state;**
 - (B) For not less than two (2) successive years immediately prior to submitting a bid, has paid taxes under the Arkansas Employment Security Law, § 11-10-101 et seq., unless exempt therefrom, and either the Arkansas Gross Receipts Act of 1941, § 26-52-101 et seq., or the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq., on any property used or intended to be used for or in connection with the firm's business; and**
 - (C) Within the two-year period, has paid any taxes to one (1) or more counties, school districts, or municipalities of the State of Arkansas on either real or personal property used or intended to be used or in connection with the firm's business;**

(4) "Commodities" shall mean materials and equipment used in the construction of public works projects; and

(5) "Nonresident firm" shall mean a firm which is not included in the definition of a "firm resident in Arkansas".

(b)(1) In the purchase of commodities by competitive bidding, all public agencies shall accept the lowest qualified bid from a firm resident in Arkansas. This bid shall be accepted only if the bid does not exceed the lowest qualified bid from a nonresident firm by more than five percent (5%) and if one (1) or more firms resident in Arkansas made written claim for a preference at the time the bids were submitted. In calculating the preference to be allowed, the appropriate procurement officials, pursuant to §§ 19-11-201 - 19-11-259, shall take the amount of each bid of the Arkansas dealers who claimed the preference and deduct five percent (5%) from its total. If, after making such deduction, the bid of any Arkansas bidder claiming the preference is lower than the bid of the nonresident firm, then the award shall be made to the Arkansas firm which submitted the lowest bid, regardless of whether that particular Arkansas firm claimed the preference.

(2) The preference provided for in this section shall be applicable only in comparing bids where one (1) or more bids are by a firm resident in Arkansas and the other bid or bids are by a nonresident firm. This preference shall have no application with respect to competing bids if both bidders are firms resident in Arkansas, as defined in this section. All public agencies shall be responsible for carrying out the spirit and intent of this section in their procurement policies. Any public agency, as defined herein, which, through any employee or designated agent, is found guilty of violating the provisions of this section or committing an unlawful act under it, shall be guilty of a misdemeanor. Notwithstanding any other provisions of Arkansas law, upon conviction that person shall be subject to imprisonment for not more than six (6) months or a fine of not more than one thousand dollars (\$1,000), or both. If any provision or condition of this subchapter conflicts with any provision of federal law or any rule or regulation made under federal law pertaining to federal grants-in-aid programs or other federal aid programs, such provision or condition shall not apply to such federal-supported contracts for the purchase of commodities to the extent that the conflict exists, but all provisions or conditions of this subchapter with which there is no conflict shall apply to contracts to purchase commodities to be paid, in whole or in part, from federal funds.

(c) The provisions of this section shall only apply to projects designed to provide utility needs of a county or municipality. Those projects shall include, but shall not be limited to, pipeline installation, sanitary projects, waterline, sewage, and water works.

19-11-260. Recycled paper products - Preference.

(a) The State Procurement Director shall issue a recycled paper content specification for each type of paper product.

(b)(1) The goal of state agencies for the percentage of paper products to be purchased that utilize recycled paper shall be:

- (A) Ten percent (10%) in fiscal year 1991;**
- (B) Twenty-five percent (25%) in fiscal year 1992;**
- (C) Forty-five percent (45%) in fiscal year 1993; and**
- (D) Sixty percent (60%) by calendar year 2000.**

(2)(A) The Office of State Procurement shall prepare a semiannual report of the state's progress in meeting the goals for the purchase of paper products with recycled content.

(B) The report shall be made to the Governor.

(c)(1) Whenever a bid is required, a preference for recycled paper products shall be exercised if the use of the products is technically feasible and price is competitive.

(2)(A) For the purpose of procurement of recycled paper products, "competitive" means the bid price does not exceed the lowest qualified bid of a vendor offering paper products manufactured or produced from virgin material by ten percent (10%).

(B) An additional one percent (1%) preference shall be allowed for products containing the largest amount of postconsumer materials recovered within the State of Arkansas.

(3) A bidder receiving a preference under this section shall not be entitled to an additional preference under § 19-11-259.

19-11-261. Cooperative purchase of paper products for local governments.

(a)(1) All cities, counties, and school districts shall participate in a cooperative purchasing program for the purchase of paper products.

(2) The program shall be administered by the State Procurement Director.

(b)(1) The director shall promulgate regulations for administration of the program.

(2) The regulations shall be reviewed by the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees of the committees.

19-11-262. Multiple award contracts.

(a) Multiple award contracts may be made only if the State Procurement Director or an agency procurement official determines in writing that a single award is not advantageous to the State of Arkansas. The determination shall state in writing a rationale and basis for the multiple award contract. Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the using agencies.

(b) If the director anticipates that multiple award contracts will be made, the invitation for bids shall include a notification of the right of the office to make such an award and the criteria upon which such an award will be based.

R1:19-11-262. Multiple award contracts

No multiple award contracts can be awarded unless the invitation for bids or request for proposals included notification of the right to make multiple awards.

19-11-263. Special procurements.

(a) Notwithstanding any other provision of this subchapter, the State Procurement Director or the head of a procurement agency may initiate a procurement above the competitive bid amount specified in § 19-11-234, where the officer determines that an unusual or unique situation exists that makes the application of all requirements of competitive bidding, competitive sealed bidding, or competitive sealed proposals contrary to the public interest.

(b) A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the director or the head of a procurement agency in the contract file, and he or she shall file a monthly report with the Legislative Council describing all such determinations.

R1:19-11-263 Special Procurement Reporting.

Agencies are required to report special procurements to the Office of State Procurement. The reports shall include a copy of the written determination of the basis for the procurement and for the selection of a particular contract, and a copy of the contract. The reports will be reviewed and collated and a consolidated report for the state will be forwarded to the Legislative Council as required.

SUBCHAPTER 3 - BIDDING - STATE INDUSTRY PRIORITY § 19-11-301 – § 19-11-306 (See Part 3 Prison Made Goods)

Subchapter 4. - BIDDING - BONDS.

19-11-401 - 19-11-405. [Repealed.]

Subchapter 5. - PURCHASES OF WORKSHOP-MADE PRODUCTS AND SERVICES.

19-11-501 – 19-11-502. [Repealed] (See Subchapter 9, 19-11-901 and 19-11-902).

Subchapter 6 - FEDERAL GOVERNMENT SURPLUS PROPERTY.

19-11-601 - 19-11-604.(Shifted to Workforce Education.)

SUBCHAPTER 7 – ETHICS § 19-11-701 - § 19-11-717 (See Part 4 Ethics)

SUBCHAPTER 8 – PROCUREMENT OF PROFESSIONAL SERVICES (See Appendix 2).

SUBCHAPTER 9 – PURCHASES OF WORKSHOP-MADE PRODUCTS AND SERVICES

19-11-901. Purchase required - Exception.

(a) All suitable commodities and services, including small purchases, hereafter procured in accordance with applicable state specifications by or for any state department, institution, or agency shall be procured from nonprofit work centers for the disabled in all cases where such commodities are available within the period specified and at the fair market price for the article or articles so procured.

(b) Services offered by work centers shall be procured by competitive sealed bidding as specified by § 19-11-229, competitive sealed proposals as specified by § 19-11-230, or competitive bidding as specified by § 19-11-234, subject to purchase exceptions set forth in § 19-11-902.

(c) This section shall not apply in any cases where products and services are available for procurement from any state department, institution, or agency, and procurement therefrom is required under the provisions of any law in effect on or after March 1, 1991.

19-11-902. Regulations.

(a) The Office of State Procurement shall be responsible for developing regulations governing implementation of this subchapter.

(b) For purposes of this subchapter:

(1) "Commodities" means all property, including, but not limited to, equipment, printing, stationery, supplies, and insurance, but excluding real property, leases on real property, or a permanent interest in real property;

(2) "Disabled individuals" means those persons who have a medically or psychiatrically determined physical, mental, or developmental disability constituting a substantial vocational handicap;

(3) "Arkansas Rehabilitation Services" means the Arkansas Rehabilitation Services of the Department of Workforce Education;

(4) "Fiscal year" means July 1 of one (1) year through June 30 of the next year;

(5) "Ordering office" means any state department, independent establishment, board, commission, bureau, service, or division of state government and any wholly owned state corporation;

(6) "Products", for purposes of this subchapter, means commodities or services wherein the price of the commodities includes at least twenty percent (20%) value added when the work center is awarded a contract using the ten

percent (10%) preference, and in the case of services, that they are performed by the disabled;

R1: 19-11-902. Regulations.

For the purposes of the Work Center-Made Products Program, the fair market price of commodities offered in a competitive environment shall be at least 20% more than the cost of materials. In the case of services, those services must be performed by disabled individuals directly under the control of Work Center representatives.

(7)(A) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

(B) This term shall not include employment agreements, collective bargaining agreements, or architectural or engineering contracts requiring approval of Arkansas State Building Services;

(8) "Sheltered workshop" means a work center which has:

(A) Certification from the United States Department of Labor as a sheltered workshop; and

(B) Been licensed by the Division of Developmental Disabilities Services of the Department of Human Services or certification from Arkansas Rehabilitation Services; and

(9)(A) "Work center" means any facility certified by the Arkansas Rehabilitation Services where any manufacture or handiwork is carried on and which is operated for the primary purpose of providing evaluation, training, and gainful employment to disabled individuals of Arkansas:

(i) As an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market; or

(ii) During such time as employment opportunities for them in the competitive labor market do not exist.

(B) "Work center" includes a sheltered work center.

R2: 19-11-902.

Before commodities and services may be procured from Work Centers, the Work Center will be required to maintain evidence of: certification from the United States Department of Labor as a "sheltered workshop" and a license from the Division of Developmental Disabilities Services of the Arkansas Department of Human Services or certification from Arkansas Rehabilitation Services.

(c) All state agencies as defined in § 19-11-203 are required to purchase their requirements of needed available and suitable products and purchase suitable

services from nonprofit work centers for disabled individuals, unless such commodities and services are authorized by prior legislation for production in another state agency, department, or institution.

(d)(1) The Office of State Procurement shall issue to all agency purchasing agents a schedule of work center-made commodities and services and the conditions under which they are to be procured from the workshops.

(2) The schedule shall include the item or service description.

R3: 19-11-902

Work Centers must provide a schedule of their commodities, services and prices to Office of State Procurement. Schedules will be posted on the Office of State Procurement website (www.accessarkansas.org/dfa/purchasing). Ordering offices will contract directly with Work Centers.

(e) Arkansas Rehabilitation Services shall undertake the inspection on a continuing basis of the workshops certified by Arkansas Rehabilitation Services to determine that they operate in accordance with the requirements of the statute and the regulations of this section.

(f)(1)(A) In order to qualify for participation in the program as a work center, an organization shall submit an application to the Office of State Procurement.

(B) If required for all vendors, there should be included a list of the commodities and services offered for sale to the state.

R4: 19-11-902. Work Center Applications for Bidding.

(a) All Work Centers who wish to participate in the Work Center Made Products Program will be required to register as a vendor with the Office of State Procurement.

(b) The Office of State Procurement may check with Arkansas Rehabilitation Services, Developmental Disabilities Services and Department of Labor to verify certification(s).

(2) Work centers shall:

(A) Furnish commodities and services in strict accordance with the allocation and government order;

(B) Maintain records of wages paid, hours of employment, and sales;

(C) Make available pertinent books and records of the agency for inspection at any reasonable time to representatives of the Arkansas Rehabilitation Services; and

(D)(i) Submit to the Arkansas Rehabilitation Services by September 1 an annual report for the preceding fiscal year.

(ii) This report shall include data on disabled workers, wages and wage supplements, hours of employment, sales, whether the workshop requires a facilities sheltered workshop certificate from the United States Department of

Labor and special minimum rates authorized where such certificate is held and such other relevant information as may be required.

(g) Where a commodity or service is identified in the schedule of work center-made commodities and services as being available through the Office of State Procurement, it shall be obtained in accordance with the requisitioning procedures of the supplying agency.

(h) An ordering office may purchase from a nonworkshop source commodities or services listed in the schedule of work center-made commodities and services in any of the following circumstances:

(1) Necessity requires delivery within the specified period, and the work center cannot give assurance of positive availability;

(2) When commodities listed on the schedule of work center-made commodities can be purchased from a nonworking center source by the agency for a price more than ten percent (10%) lower than work center-made commodities included in the schedule;

(3) Services offered by any work center shall be procured by any agency in accordance with this section at a price not more than ten percent (10%) above the lowest price submitted from a nonworking center source.

R5: 19-11-902. Purchase Procedure.

In the case of small order procurement, competitive bidding, and competitive sealed bidding and proposals, the agency shall procure commodities and services from the Work Centers, when contract terms and specifications are equal and the price is not more than 10% above the lowest competitive price, obtained from a non-work center.

R6: 19-11-902.

Agencies must document purchases of Work Center Made Products as well as purchases of non-work center made commodities and services when work centers are competing but were unsuccessful in obtaining the contract. Semi-annual reports including the circumstances and documentation of purchase exceptions shall be submitted to the Office of State Procurement, ATTN: Work Center Coordinator.

(i) Work center-made product commodities will be delivered in accordance with the terms of the purchase order.

(j) Where a workshop fails to comply with the terms of a government order, the ordering office shall make reasonable efforts to negotiate an adjustment before taking action to cancel the order.

(k) Any alleged violation of these regulations shall be investigated by the Office of State Procurement, which shall notify the work center concerned and afford it an opportunity to submit a statement of facts and evidence.

PART 2 - MARKETING AND REDISTRIBUTION

CHAPTER 8 - DEPARTMENT OF FINANCE AND ADMINISTRATION

25-8-106. Marketing and redistribution of state personal property.

(a) The provisions of this section shall be applicable only with respect to personal property and shall not be interpreted to apply or to affect in any way the disposition of surplus real property of the state.

(b)(1) There is created within the Office of State **Procurement** of the Department of Finance and Administration a Marketing and Redistribution Section for the purpose of promoting and insuring effective utilization of surplus state property.

(2)(A) All state agencies, boards, commissions, departments, and **colleges and universities are required, and county, municipal or other tax supported institutions are authorized** to utilize the services of the Marketing and Redistribution Section of the Office of State **Procurement** of Finance and Administration **unless specifically exempted in writing by the Director of the Office of State Procurement.**

(B)(i) Nothing in this section shall be construed to make it mandatory that county, municipal, or other local government units utilize the services of the Marketing and Redistribution Section.

(ii) **Nothing in this section shall be construed to make it mandatory that any agency, department, division, office, board, commission, or institution of this state, including state-supported institutions of higher education, utilize the services of the Marketing and Redistribution Section in the sale of surplus computer equipment and electronics to state agency employees for a price not less than ten percent (10%) above depreciated value.**

(3) The Department of Finance and Administration shall maintain adequate and accurate records of the costs for operating the Marketing and Redistribution Section and is authorized to establish fair and reasonable charges for the services of the section. The charges for services shall be deposited in the State Treasury as nonrevenue receipts, there to be credited to the Property Sales Holding Fund for the operation, maintenance, and improvement of the Marketing and Redistribution Section.

(c) The Office of State **Procurement** of the Department of Finance and Administration may maintain an inventory of furniture, equipment, and other items which shall be made available to state agencies on rental agreements based upon fair and reasonable rental values.

(d) The Department of Finance and Administration is authorized to establish a fair and reasonable fee schedule for redistributing property between state agencies upon their request.

(e) Proceeds from the sale, transfer, or rental of property by the State

Procurement Director shall be accounted for as follows:

(1) The purchasers, transferees, and lessees of property available for such purposes as are authorized by this section shall transmit to the Office of State **Procurement** of the Department of Finance and Administration the agreed sale price, service charge, or rental fee;

(2) The Office of State **Procurement** shall deposit the full amount of proceeds received, as set out above, in the State Treasury in the manner as provided by law;

(3) Proceeds from the sale or transfer of property deposited in the State Treasury shall be classified as nonrevenue receipts and be credited to the Property Sale Holding Fund therein created on the books of the State Treasurer as a trust fund.

(A) Funds deposited in the Property Sale Holding Fund may be expended only by the selling or transferring agency under procedures established by the Chief Fiscal Officer of the State and appropriations provided by the General Assembly.

(B) However, funds deposited in the Property Sale Holding Fund from the sale of property purchased from agency cash funds may be refunded to the agency cash fund from which the original expenditure was made by the issuance of a warrant under procedures established by the Chief Fiscal Officer of the State and the Auditor of the State to be payable from appropriations provided by the General Assembly for disposition of the proceeds.

(f) The Director of the Department of Finance and Administration is authorized to promulgate reasonable rules and regulations, not inconsistent with law, for compliance with the provisions of this section, the Arkansas **Procurement** Law, § 19-11-201 et seq., and the General Accounting and Budgetary Procedures Law, § 19-4-101 et seq.

19-11-242. Commodity management regulations.

The State **Procurement** Director shall promulgate regulations governing:

(1) The sale, lease, or disposal of surplus commodities by public auction, competitive sealed bidding, or other appropriate method designated by regulation, and no employee of the Department of Finance and Administration **or member of their immediate family** shall be entitled to purchase any such commodities; and

(2) Transfer of excess commodities within the state.

R1: 19-11-242. Agency commodity management procedures.

Disposition of commodities other than computers and electronic equipment.

(a) Resale. Marketing and Redistribution shall make available to agencies and tax supported entities commodities in serviceable condition and/or commodities of potential use by agencies or tax supported entities for a twenty-day period prior to

making them available to the general public. During the twenty-day hold period commodities shall be sold to agencies or tax supported entities by Marketing and Redistribution. Commodities that historically have not sold to agencies or tax supported entities or items that are unserviceable may be offered for sale to the general public without the requirement of the twenty-day hold period. The Director may waive the 20 day requirement when he determines that such waiver is in the state's best interest.

(b) Transfer. Commodities that are no longer needed by an agency may be sold to another agency by submitting a written request to Marketing and Redistribution detailing the equipment description, serial number, property number, the agency the property will be sold to and the dollar value agreed upon. Written communication from the agency requesting the purchase must also be forwarded to Marketing and Redistribution indicating agreement to the transfer and the dollar value agreed upon.

(c) Disposal. When commodities have no scrap or resale value, a written request for disposal shall be submitted to Marketing and Redistribution, which shall then forward, within ten (10) working days, a certificate of property disposal indicating the proper handling procedure for the commodities.

(d) Cannibalization.

(1) The disassembly of an item for use of its component parts for repair or maintenance of a similar item will only be authorized if such action has greater potential value and benefit than disposal or trade-in of the item in its existing form. Authorization for cannibalization shall be approved by Marketing and Redistribution prior to any disassembly or removal of components parts. If authorized, the item will be removed from the agency's property listing by the requesting agency. Any residual material remaining after cannibalization must be processed through Marketing and Redistribution. Requests for authorization for cannibalization shall be expedited. If properly marked, authorization should be returned to agency with ten (10) working days. It is understood that there may be no residual material remaining after cannibalization, but if any, residual material must be processed through Marketing and Redistribution.

(2) Motor vehicles eligible to be registered for highway use (cars and trucks), whether registered or not, may be cannibalized after obtaining authorization from Marketing and Redistribution. These vehicles WILL NOT be removed from the property listing until the carcass of the vehicle has been disposed of by Marketing and Redistribution. In no event shall more than ninety days (90) elapse between the authorization of cannibalization and processing of the carcass by Marketing and Redistribution. These procedures do not exempt an agency from compliance with any

other requirements relating to the disposal or acquisition of motor vehicles.

(e) Handling of Surplus Equipment. Agencies with surplus Items must contact Marketing and Redistribution to schedule a delivery or pick-up date. A Surplus Disposal Form (SDF) shall be transmitted by the agency showing the agency name, address, phone number, contact person and listing all items with serial and property numbers (if available). The property transfer request will be processed by Marketing and Redistribution when the surplus items are delivered or picked up.

R2: 19-11-242 Auction and on-site sales

(A) Disposition of commodities after holding period.

(1) General requirements. Commodities having no foreseeable use to an agency or tax-supported entity or commodities that have completed the twenty-day hold period may be offered for sale. Furniture or equipment may be loaned or rented to a state agency with the approval of the owning agency. The rental fee(s) less applicable handling fee(s) will be remitted to the owning agency.

(2) Notice required. Public notice of commodities sold by competitive sealed bid shall be given at least five days prior to the date established for the sale. The notice will include publication in any electronic or printed medium.

(3) Public auction.

(a) Public auction whether electronic or traditional may be used when deemed in the best interest of the State. Auction costs will be paid from proceeds. In a traditional auction, if proceeds do not cover the costs, the agency requesting the auction will be responsible for any expenses not covered from the proceeds. Any cost associated with an electronic auction will be covered by proceeds from the sale.

(b) Procedures. In a traditional auction a licensed auctioneer will be used. The solicitation to bidders shall stipulate, at a minimum: all terms and conditions of any sale, that the purchaser must remove all items purchased within a stated time, and that the state retains the right to reject any and all bids. In an electronic auction items will be shipped to the successful bidder, unless the bidder wishes to pick up the item.

(4) Competitive sealed bidding.

(a) Competitive sealed bidding will be used when:

(i) the value of the item cannot be determined based on market value or past history of same or similar items sold; or

(ii) it is determined by Marketing and Redistribution that it is in the best interest of the State.

(b) Procedures. When surplus commodities are to be sold by competitive sealed bidding, the procedures followed shall be in accordance with 19-11-204, 19-11-228, 19-11-229 and the regulations promulgated hereunder except:

(i) the award shall be made to the highest bidder with the state retaining the right to accept or reject any or all bids when in the best interest of the State.

(5) On-site Sales.

(a) Definition. Onsite sales includes the process of (1) internet auctioning and (2) sale of commodities to the general public from the Marketing and Redistribution office, a satellite location and/or other agency locations when approved by Marketing and Redistribution.

(b) Onsite sales will be used for surplus items not purchased by other state agencies or tax supported entities.

(c) Procedure. Selling price will be established by Marketing and Redistribution based upon demand, condition of commodities, past experience gained from auction or competitive sealed bid sales; and prevailing retail prices for same or similar commodities in the local market.

(6) Negotiated sale. Negotiated sale may be used if no acceptable bids were received during the bid process and an offer is made "after the fact" for the item. Offers will only be accepted from bidders that participated in the sealed bid offering the item.

(7) Trade-in. Surplus commodities may be traded in when the Marketing and Redistribution Manager or Assistant Marketing and Redistribution Manager determines that the trade-in value is expected to exceed the value estimated to be obtained through the sale of the commodity less administrative expenses incurred during a sale.

(8) Donation. Surplus property may be donated to tax supported entities, non-profit organizations, etc. when requested in writing by the owning agency and approved by Marketing and Redistribution.

(a) Written communication must be submitted identifying the equipment by name, serial number, property number, etc. to the Marketing and Redistribution Manager. The Marketing and Redistribution Manager will estimate the property value and forward the request to the Director of the Office of State Procurement for his approval/disapproval.

(b) The Director of the Office of State Procurement will respond in written communication to the requesting agency on a case-by-case basis.

(c) The requesting agency must maintain a copy of the original request for the donation and the written approval/disapproval from the Director of the Office of State

Procurement for audit purposes.

(d) Copies of the request and approval/disapproval will also be maintained at Marketing and Redistribution.

(9) The Arkansas State Highway and Transportation Department may dispose of commodities without the assistance of the Office of State Procurement, but it shall comply with the procedures outlined herein for said disposition. Nothing herein is intended to prohibit the use of the Office of State Procurement for the disposition of those commodities, and the Department may request the Office of State Procurement make the disposition.

(10) Excess commodities in remote locations and/or property too heavy or expensive to transport to Marketing and Redistribution.

(a) Excess commodities that are in remote locations and/or commodities where the cost to transport to Marketing and Redistribution would be prohibitive should be reported by written communication to Marketing and Redistribution with a complete description and details of the condition of the equipment. Marketing and Redistribution will make one of the following recommendations:

(i) The commodity should be redistributed for state use and Marketing and Redistribution will notify agencies and/or tax-supported entities that could utilize the commodity. When the property is sold, the receiving agency will be responsible for the removal of the item(s), with the expense of moving being taken into consideration when price is determined.

(ii) Marketing and Redistribution will prepare an invitation for bids or authorize the agency to prepare an invitation for bids with inspection being held at the agency location.

(iii) A certificate of property disposal will be transmitted to the owning agency designated as follows:

{a} The property identified is authorized for cannibalization by the Marketing and Redistribution Manager who hereby authorizes the agency to perform the cannibalization.

{b} The property identified is authorized for destruction by the Marketing and Redistribution manager who hereby authorizes the agency to perform the destruction.

{c} Property that has a material content of lead, copper, brass, iron, etc. will be disposed of by sale to a local scrap dealer(s) at local prices. Payment(s) received are to be sent and made payable to: Marketing and Redistribution with a copy of the Certificate of Property Disposal authorizing the sale.

{d} Property with resale value that is not feasible for transport to Marketing and Redistribution may be disposed of by obtaining quote bids "as is, where is". Owning agencies should attempt to obtain (3) bids. A copy of the bid quotes, a copy of the Certificate of Property Disposal authorizing the sale and the

proceeds are to be sent and made payable to Marketing and Redistribution.

(4) Specialized commodities may be offered for trade-in with the trade-in price offered being forwarded in a written transmission to Marketing and Redistribution for determination of price acceptability.

(b) If none of the above procedures are applicable, the Director of the Office of State Procurement shall make an individual determination.

19-11-243. Proceeds from surplus commodities.

The State **Procurement** Director shall promulgate regulations for the allocation of proceeds from the sale, lease, or disposal of surplus commodities, to the extent practicable, to the using agency which had possession of the commodity.

R1:19-11-243. Allocation of proceeds from sale or disposal of surplus commodities

(A) Using agency. The allocation of proceeds from the sale, lease, or disposal of surplus commodities, less appropriate fees, will be made and deposited monthly to the using agency which had possession of the commodity.

*(B) Fee schedule. The Office of State **Procurement** will develop a fee schedule to defray the costs of the commodity management program. The fee schedule will set forth various charges for services rendered.*

PART 3 – PRISON MADE GOODS

LEGISLATION ENACTED TO AUTHORIZE THE PRISON-MADE GOODS ACT OF 1967 AND TO AUTHORIZE THE STATE BOARD OF PENAL INSTITUTIONS TO ESTABLISH INDUSTRIES AT THE PENITENTIARY AND OTHER INSTITUTIONS

12-30-202. Legislative intent.

Whereas, the means now provided for the employment of prison labor are inadequate to furnish a sufficient number of prisoners with diversified employment, it is declared to be the intent of this subchapter:

(1) To further provide more adequate, regular, and suitable employment for the prisoners of this state, consistent with proper penal purposes;

(2) To further utilize the labor of prisoners for self-maintenance and for reimbursing this state for expenses incurred by reason of their crimes and imprisonment;

(3) To effect the requisitioning and disbursement of prison products directly through established state authorities with no possibility of private profits therefrom.

12-30-203. Establishment of prison industries.

The Board of Correction and Community Punishment is authorized to purchase, in the manner provided by law, equipment, raw materials, and supplies and to engage the supervisory personnel necessary to establish and maintain for this state, at the penitentiary or any penal farm or institution now or hereafter under the control of this board, industries for the utilization of services of prisoners in the manufacture or production of articles or products as may be needed for the construction, operation, maintenance, or use of any office, department, institution, or agency supported in whole or in part by this state and the political subdivisions thereof.

12-30-204. Purchase of goods by state and local agencies.

(a) All offices, departments, institutions, and agencies of this state which are supported in whole or in part by this state, and all political subdivisions of this state, may purchase, at the discretion of the office, department, institution, or agency, from the Board of Correction and Community Punishment any products required by the offices, departments, institutions, agencies, or political subdivisions of this state produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(b) Such offices, departments, institutions, and agencies shall not be required to submit an invitation for bid to the Board of Correction and Community Punishment for all products known to be produced or manufactured by the Department of Correction utilizing prison labor as provided for by this subchapter.

(c) All purchases made pursuant to this section shall be made through the Department of Correction's purchasing department, upon requisition by the proper authority of the office, department, institution, agency, or political subdivision of this state requiring the articles or products.

12-30-205. Purchase of goods by nonprofit organizations.

Nonprofit organizations may also purchase goods provided by the Department of Correction upon the condition that the goods may not be resold for profit.

12-30-206. Prices.

(a) The Board of Correction and Community Punishment shall fix and determine the prices at which all articles or products manufactured or produced shall be furnished.

(b) The prices shall be uniform and nondiscriminating to all, and shall not

exceed the wholesale market prices.

12-30-207. Catalogues.

(a) The Board of Correction and Community Punishment shall cause to be prepared, at such times as it may determine, catalogues containing the description of all articles and products manufactured or produced by it pursuant to the provisions of this subchapter.

(b) Copies of the catalogue shall be sent by it to all offices, departments, institutions, and agencies of this state and made accessible to all political subdivisions of this state referred to in § 12-30-204.

12-30-208. Repealed.

12-30-209. Order of distribution.

The articles or products manufactured or produced by prison labor in accordance with the provisions of this subchapter shall be devoted, first, to fulfilling the requirements of the offices, departments, institutions, and agencies of this state which are supported in whole or in part by this state, and, second, to supply the political subdivisions of this state with the articles and products.

12-30-210. Annual statements.

(a) The Director of the Department of Correction and the manager or authorities, by whatever name known, having charge of the penal institutions of this state, shall annually make a full detailed statement of:

(1) All materials, machinery, or other property procured, and the cost thereof, and the expenditures made during the last preceding year for manufacturing purposes, together with a statement of all materials then on hand to be manufactured, or in process of manufacture, or manufactured;

(2) All machinery, fixtures, or other appurtenances for the purpose of carrying on the labor of the prisoners; and

(3) The earnings realized during the last preceding year as the proceeds of the labor of the prisoners at the penitentiary or penal institutions of this state.

(b) The statement shall be verified by the oath of the manager or authorities having charge of penal institutions to be just and true and shall be forwarded to the Board of Correction and Community Punishment by him or them within thirty (30) days after the end of the last preceding year.

12-30-211. Rules and regulations.

The Board of Correction and Community Punishment shall have power and authority to prepare and promulgate rules and regulations which are necessary to give effect to the provisions of this subchapter with respect to matters of administration and procedure respecting them.

12-30-212. Auditor bound by voucher or warrant.

No voucher, certificate, or warrant issued on the Auditor of State by any office, department, institution, or agency shall be questioned by him or by the Treasurer of State on the grounds that this subchapter has not been complied with by the office, department, institution, or agency.

12-30-213. Intentional violations.

If an intentional violation of this subchapter by any office, department, institution, or agency continues, after notice from the Governor to desist, then the intentional violation shall constitute a malfeasance in office and shall subject the person or persons responsible for this violation to suspension or removal from office.

12-30-214. Appropriations - Contracts.

(a) The Board of Correction and Community Punishment is authorized to erect buildings; to purchase equipment; to procure tools, supplies, and materials; to purchase, install, or replace equipment; to employ personnel; and to otherwise defray the necessary expenses incident to the employment of prisoners as herein provided.

(b) To further aid in the above purposes, the Board of Correction and Community Punishment is empowered to enter into contracts and agreements with any person or persons upon a self-liquidating basis respecting the acquisition and purchase of any equipment, tools, supplies, and materials, to the end that they may be paid for over a period of not exceeding ten (10) years. The aggregate amount of the purchases or acquisitions are not to exceed five hundred thousand dollars (\$500,000) unless specifically approved by the Governor with the amounts to be payable solely out of the revenues derived from the activities authorized by this subchapter.

(c) Nothing in this section shall be so construed or interpreted as to authorize or permit the incurring of a state debt of any kind or nature as contemplated by the Constitution of this state in relation to the debt.

SUBCHAPTER 3 - BIDDING - STATE INDUSTRY PRIORITY

19-11-301. Purpose.

The purpose of this subchapter is to protect Arkansas private industries which employ Arkansas taxpayers and citizens from the unfair advantage held by certain out-of-state penal institutions that utilize convict labor and are exempt from minimum wage requirements, Occupational Safety and Health Act requirements, and other such standards which are imposed on private industries

and which increase the costs of products manufactured by private industries. This advantage which is enjoyed by many out-of-state penal institutions allows them to often receive contracts under the Arkansas Purchasing Law, § 19-11-201 et seq., bidding process when Arkansas private industries also submit bids, thus hindering a healthy competitive environment for the private industries of this state.

19-11-302. Definitions.

As used in this subchapter, unless the context otherwise requires:

- (1) "State" means the government of the State of Arkansas and all departments, branches, agencies, and subdivisions thereof;
- (2) "Private industry" means manufacturers, makers of products, companies, corporations, or firms which are not departments, divisions, or arms of the federal, state, or local governments;
- (3) "Private industry located within the State of Arkansas" means private industries, as defined in subdivision (2) of this section, which are located in Arkansas, employing Arkansas citizens and taxpayers as laborers in the process of manufacturing goods and products within this state;
- (4) "Bids" means proposals submitted to the state for the sale of products to the state; and
- (5) "Penal institution" means a penitentiary, jail, prison, reformatory, or other such establishment owned, operated, or funded by a state or local government wherein incarcerated criminals are kept.

19-11-303. Provisions controlling.

Where provisions of this subchapter are inconsistent with provisions of the current Arkansas Purchasing Law, § 19-11-201 et seq., the provisions in this subchapter shall control.

19-11-304. Priority for state industries.

In the bidding process for the sale of products for use by the state, bids submitted by private industries located within the State of Arkansas and employing Arkansas taxpayers shall be given priority over bids submitted by out-of-state penal institutions employing convict labor.

19-11-305. Award to lowest state bidder - Exceptions.

Subject to any applicable bonding requirements, in all bidding procedures involving a bid by one (1) or more out-of-state penal institutions and a bid by one (1) or more private industries located within the State of Arkansas, the contract shall be awarded to the sole Arkansas bidder or lowest Arkansas bidder if the Arkansas bidder is not underbid by more than five percent (5%), as provided in § 19-11-259, by another representative of private industry located outside the State

of Arkansas or by more than fifteen percent (15%) by an out-of-state correctional institution.

19-11-306. Underbid by nonresident industry or penal institution.

Subject to any applicable bonding requirements, in the event that a private Arkansas bidder is underbid by more than five percent (5%), as provided in § 19-11-259, by another representative of private industry located outside the State of Arkansas or is underbid by more than fifteen percent (15%) by an out-of-state correctional institution, the state contract shall be awarded to the lowest responsible bidder, whether that bidder is a penal or correctional institution or is a representative of private industry.

PART 4 – ETHICS IN PUBLIC CONTRACTING

SUBCHAPTER 7 – ETHICS

19-11-701. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Blind trust" means an independently managed trust in which the employee-beneficiary has no management rights and in which the employee-beneficiary is not given notice of alterations in or other dispositions of the property subject to the trust;

(2) "Business" means any corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or any other legal entity;

(3) "Commodities" means commodities as defined in the Arkansas Purchasing Law, § 19-11-201 et seq.;

(4) "Confidential information" means any information which is available to an employee only because of the employee's status as an employee of this state and is not a matter of public knowledge or available to the public on request;

(5) "Conspicuously" means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it;

(6) "Contract" means all types of state agreements, regardless of what they may be called, for the purchase or disposal of commodities and services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing;

(7) "Contractor" means any person having a contract with a state agency;

(8) "Employee" means an individual drawing a salary from a state agency, whether elected or not, and any nonsalaried individual performing personal services for any state agency;

(9) "Financial interest" means:

(A) Ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive, more than one thousand dollars (\$1,000) per year, or its equivalent;

(B) Ownership of more than a five percent (5%) interest in any business; or

(C) Holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management;

(10) "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received;

(11) "Immediate family" means a spouse, children, parents, brothers and sisters, and grandparents;

(12) "Official responsibility" means direct administrative or operating authority, whether intermediate or final, either exercisable alone or with others, either personally or through subordinates, to approve, disapprove, or otherwise direct state action;

(13) "Person" means any business, individual, union, committee, club, or other organization or group of individuals;

(14) "Procurement" means the buying, purchasing, renting, leasing, or otherwise obtaining of any commodities or services. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration;

(15) "Services" means services as defined in the Arkansas Purchasing Law, § 19-11-201 et seq.; and

(16) "State agency" means any office, department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, judicial, or legislative branch of this state.

19-11-702. Penalties.

Any employee or nonemployee who shall knowingly violate any of the provisions of this subchapter shall be guilty of a felony and upon conviction shall be fined in any sum not to exceed ten thousand dollars (\$10,000) or shall be imprisoned not less than one (1) nor more than five (5) years, or shall be punished by both.

19-11-703. Statement of policy.

(a) Public employment is a public trust. It is the policy of the state to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by the state. The policy is implemented by prescribing essential restrictions against conflict of interest without creating unnecessary obstacles to entering public service.

(b) Public employees must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the state procurement organization.

(c) To achieve the purpose of this subchapter, it is essential that those doing business with the state also observe the ethical standards prescribed in this subchapter.

19-11-704. General standards of ethical conduct.

(a)(1) General Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust.

(2) In order to fulfill this general prescribed standard, employees must also meet the specific standards set forth in § 19-11-705, which refers to employee conflict of interest; § 19-11-706, which refers to employee disclosure requirements; § 19-11-707, which refers to gratuities and kickbacks; § 19-11-708, which refers to prohibition against contingent fees; § 19-11-709, which refers to restrictions on employment of present and former employees; and § 19-11-710, which refers to use of confidential information.

(b) General Ethical Standards for Nonemployees. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this subchapter is also a breach of ethical standards.

19-11-705. Employee conflict of interest.

(a)(1) Conflict of Interest. It shall be a breach of ethical standards for any employee to participate directly or indirectly in any proceeding or application, in any request for ruling or other determination, in any claim or controversy, or in any other particular matter pertaining to any contract or subcontract, and any solicitation or proposal therefor, in which to the employee's knowledge:

(A) The employee or any member of the employee's immediate family has a financial interest;

(B) A business or organization has a financial interest, in which business or organization the employee, or any member of the employee's immediate family, has a financial interest; or

(C) Any other person, business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment is a party.

(2) "Direct or indirect participation" shall include, but not be limited to, involvement through decision, approval, disapproval, recommendation, preparation of any part of a procurement request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(b) Financial Interest in a Blind Trust. Where an employee or any member of the employee's immediate family holds a financial interest in a blind trust, the

employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest if disclosure of the existence of the blind trust has been made to the Director of the Department of Finance and Administration.

(c) **Discovery of Conflict of Interest, Disqualification, and Waiver.** Upon discovery of a possible conflict of interest, an employee shall promptly file a written statement of disqualification with the Director of the Department of Finance and Administration and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the director in accordance with § 19-11-715(b) for an advisory opinion as to what further application, if any, the employee may have in the transaction, or for a waiver in accordance with § 19-11-715(c).

19-11-706. Employee disclosure requirements.

(a) **Disclosure of Benefit Received from Contract.** Any employee who has or obtains any benefit from any state contract with a business in which the employee has a financial interest shall report such benefit to the Director of the Department of Finance and Administration. However, this section shall not apply to a contract with a business where the employee's interest in the business has been placed in a disclosed blind trust.

(b) **Failure to Disclose Benefit Received.** Any employee who knows or should have known of such benefit and fails to report the benefit to the director is in breach of the ethical standards of this section.

19-11-707. Gratuities and kickbacks.

(a) **Gratuities.** It is a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(b) **Kickbacks.** It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor, or any person associated therewith, as an inducement for the award of a subcontract or order.

19-11-708. Prohibition against contingent fees.

(a) **Contingent Fees.** It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or

contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

(b) **Representation of Contractor.** Before being awarded a state contract other than by procedures set forth in the Arkansas Purchasing Law, § 19-11-201 et seq., and regulations promulgated thereunder for small purchases, every person shall represent, in writing, that such person has not retained anyone in violation of subsection (a) of this section. Failure to do so constitutes a breach of ethical standards.

(c) **Notice.** The representation prescribed in subsection (b) of this section shall be conspicuously set forth in all contracts and solicitations therefor.

19-11-709. Restrictions on employment of present and former employees.

(a) **Contemporaneous Employment Prohibited.** It shall be a breach of ethical standards for any employee who is involved in procurement to become or be, while such an employee, the employee of any party contracting with the state agency by which the employee is employed.

(b) **Restrictions on Former Employees in Matters Connected with Their Former Duties.**

(1) **Permanent Disqualification of Former Employee Personally Involved in a Particular Matter.** It shall be a breach of ethical standards for any former employee knowingly to act as a principal or as an agent for anyone other than the state in connection with any:

(A) Judicial or other proceeding, application, request for a ruling, or other determination;

(B) Contract;

(C) Claim; or

(D) Charge or controversy

in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the state is a party or has a direct and substantial interest.

(2) **One-Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible.** It shall be a breach of ethical standards for any former employee, within one (1) year after cessation of the former employee's official responsibility in connection with any:

(A) Judicial or other proceeding, application, request for a ruling, or other determination;

(B) Contract;

(C) Claim; or

(D) Charge or controversy knowingly to act as a principal or as an agent for anyone other than the state in matters which were within the former employee's official responsibility, where the state is a party or has a direct or substantial interest.

(c) **Disqualification of Partners.**

(1) When Partner Is a State Employee. It shall be a breach of ethical standards for a person who is a partner of an employee knowingly to act as a principal or as an agent for anyone other than the state in connection with any:

(A) Judicial or other proceeding, application, request for a ruling, or other determination;

(B) Contract;

(C) Claim; or

(D) Charge or controversy

in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the state is a party or has a direct and substantial interest.

(2) When a Partner Is a Former State Employee. It shall be a breach of ethical standards for a partner of a former employee knowingly to act as a principal or as an agent for anyone other than the state where such former employee is barred under subsection (b) of this section.

(d)(1) Selling to State After Termination of Employment Is Prohibited. It shall be a breach of ethical standards for any former employee, unless the former employee's last annual salary did not exceed ten thousand five hundred dollars (\$10,500), to engage in selling or attempting to sell commodities or services to the state for one (1) year following the date employment ceased.

(2) The term "sell", as used in this subsection, means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefor is subsequently negotiated by another person.

(e)(1) This section is not intended to preclude a former employee from accepting employment with private industry solely because his employer is a contractor with this state.

(2) This section is not intended to preclude an employee, a former employee, or a partner of an employee or former employee from filing an action as a taxpayer for alleged violations of this subchapter.

19-11-710. Use of confidential information.

It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain or for the actual or anticipated personal gain of any other person.

19-11-711. Public access to procurement information.

Procurement information shall be public record to the extent provided in the Freedom of Information Act, § 25-19-101 et seq., except as otherwise provided in this subchapter and the Arkansas Purchasing Law, § 19-11-201 et seq.

19-11-712. Civil and administrative remedies against employees who breach ethical standards.

(a) **Existing Remedies Not Impaired.** Civil and administrative remedies against employees which are in existence on July 1, 1979, shall not be impaired.

(b) **Supplemental Remedies.** In addition to existing remedies for breach of the ethical standards of this subchapter, or regulations promulgated thereunder, the Director of the Department of Finance and Administration may impose any one (1) or more of the following:

- (1) Oral or written warnings or reprimands;
- (2) Forfeiture of pay without suspension;
- (3) Suspension with or without pay for specified periods of time; and
- (4) Termination of employment.

(c) **Right to Recover from Employee Value Received in Breach of Ethical Standards.** The value of anything received by an employee in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, shall be recoverable by the state as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.

(d) **Due Process.** Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

19-11-713. Civil and administrative remedies against nonemployees who breach ethical standards.

(a) **Existing Remedies Not Impaired.** Civil and administrative remedies against nonemployees which are in existence on July 1, 1979, shall not be impaired.

(b) **Supplemental Remedies.** In addition to the existing remedies for breach of the ethical standards of this subchapter, or regulations promulgated thereunder, the Director of the Department of Finance and Administration may impose any one or more of the following:

- (1) Oral or written warnings or reprimands;
- (2) Termination of transactions; and
- (3) Suspension or debarment from being a contractor or subcontractor under state contracts.

(c) **Right to Recover from Nonemployee Value Transferred in Breach of Ethical Standards.** The value of anything transferred in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, by a nonemployee shall be recoverable by the state from such person as provided in § 19-11-714, which refers to recovery of value transferred or received in breach of ethical standards.

(d) Due Process. Notice and an opportunity for a hearing shall be provided prior to imposition of any of the remedies set forth in subsection (b) of this section.

19-11-714. Recovery of value transferred or received in breach of ethical standards.

(a) General Provisions. The value of anything transferred or received in breach of the ethical standards of this subchapter, or regulations promulgated thereunder, by an employee or a nonemployee may be recovered from both the employee and the nonemployee.

(b) Recovery of Kickbacks by the State. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the state and will be recoverable under this subchapter from the recipient. In addition, this value may also be recovered from the subcontractor making such kickbacks. Recovery from one (1) offending party shall not preclude recovery from other offending parties.

19-11-715. Duties of Director of Department of Finance and Administration.

(a) Regulations. The Director of the Department of Finance and Administration shall promulgate regulations to implement this subchapter and shall do so in accordance with this subchapter and the applicable provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(b) Advisory Opinions. On written request of employees or contractors and in consultation with the Attorney General, the director may render written advisory opinions regarding the appropriateness of the course of conduct to be followed in proposed transactions. Such requests and advisory opinions may be duly published in the manner in which regulations of this state are published. Compliance with the requirements of a duly promulgated advisory opinion of the director shall be deemed to constitute compliance with the ethical standards of this subchapter.

(c) Waiver. On written request of an employee, the director may grant an employee a written waiver from the application of § 19-11-705, which refers to employee conflict of interest, and grant permission to proceed with the transaction to such extent and upon such terms and conditions as may be specified. Such waiver and permission may be granted when the interests of the state so require or when the ethical conflict is insubstantial or remote.

19-11-716. Participation in business incubators - Regulations and guidelines.

(a) The provisions of this subchapter shall not be applicable to faculty or staff of state-supported institutions of higher education participating in business incubators within this state.

(b)(1) The Director of the Department of Finance and Administration shall promulgate rules and regulations pursuant to the procedure for adoption as provided under the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and under § 10-3-309 to implement a program allowing admittance to business incubators by faculty or staff of state-supported institutions of higher education or admittance by companies in which faculty or staff may hold an ownership interest.

(2) The program may include guidelines setting forth full disclosure requirements, any limitations on ownership interests, maximum income amounts to be received, annual reporting to the General Assembly, mandatory levels of student participation and such other reasonable restrictions and requirements as are necessary to maintain the public trust while encouraging the facilitation of commercialization of university-generated technology or discovery.

19-11-717. Institutions of higher education.

Notwithstanding anything in this subchapter to the contrary, it shall not be a violation of § 19-11-709, or a conflict of interest, or a breach of ethical standards for:

(1) An institution of higher education to contract with a person or firm in which an employee or former employee of such institution has a financial interest; or

(2) An employee or former employee of an institution of higher education to participate directly or indirectly in any matter pertaining to any contract or subcontract or any solicitation or proposal therefor between the institution and a person or firm in which such employee or former employee has a financial interest;

If, in either of the foregoing events, such contract or subcontract, solicitation, or proposal involves patents, copyrights, or other proprietary information in which the institution and the employee or former employee have rights or interests; provided that any such contract or subcontract shall be approved by the governing board of such institution in public meeting.

PART 5 – MINORITY PROCUREMENT

DIVISION OF MINORITY BUSINESS ENTERPRISE

LEGISLATION ENACTED TO ESTABLISH THE DIVISION OF MINORITY BUSINESS ENTERPRISE AND ITS ADVISORY COUNCIL AND TO ESTABLISH THE MINORITY BUSINESS ECONOMIC DEVELOPMENT ACT

15-4-301. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Division" means the Division of Minority Business Enterprise of the Department of Industrial Development;

(2) "Minority business enterprise" means a business enterprise that is owned or controlled solely by one (1) or more socially or economically disadvantaged persons. The disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cause.

15-4-302. Creation.

The Division of Minority Business Enterprise:

(1) Is established and confirmed within the Department of Industrial Development under the jurisdiction of the Arkansas Industrial Development Commission;

(2) Shall be operated as a division within the Department of Industrial Development; and

(3) Shall perform the functions and duties as provided in this subchapter.

15-4-303. Advisory council.

(a) The division shall be represented by a statewide minority business advisory council to serve the Division of Minority Business Enterprise.

(b) The council shall consist of seven (7) members.

(c) The Governor shall appoint the council with the advice and consent of the Senate.

(d) Except as otherwise provided by law, members of the council shall serve without compensation.

(e) The term of office of the council shall be at the pleasure of the Governor.

15-4-304. Administrator.

The head of the division is the administrator and shall be appointed by the Governor.

15-4-305. Duties.

The division shall:

(1) Provide technical, managerial, and counseling services and assistance to minority business enterprises;

(2) With the participation of other state departments and agencies as appropriate:

(A) Develop comprehensive plans and specific program goals for a minority business enterprise program;

(B) Establish regular performance monitoring and reporting systems to assure that goals are being achieved; and

(C) Evaluate the impact of federal and state support in achieving the objectives established by the department;

(3) Implement state policy in support of minority business enterprise development and may coordinate the plans, programs, and operations of state government that affect or may contribute to the establishment, preservation, and strengthening of minority business enterprises;

(4) Coordinate, make application for, and administer federal funding grants from the United States Office of Minority Business Enterprise and other federal agencies where applicable;

(5) Promote the mobilization of activities and resources of state agencies and local governments, business and trade associations, universities, foundations, professional organizations, and volunteer and other groups toward the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of other state departments and agencies;

(6) Establish a center for the development, collection, and dissemination of information that will be helpful to persons and organizations throughout the state in undertaking or promoting the establishment and successful operation of minority business enterprises;

(7) Conduct coordinated reviews of all proposed state training and technical assistance activities in direct support of the minority business enterprise program to ensure consistency with program goals and to preclude duplication of effort of other state agencies with overlapping jurisdictions;

(8) Recommend appropriate legislative or executive actions to enhance minority business opportunities in this state;

(9) Assist minority businesses in obtaining governmental or commercial financing for business expansion, establishment of new businesses, or industrial development projects;

(10) Provide services to promote the organization of local development corporations for rural development and assist minority businessmen in agrarian endeavors;

(11) Assist minority businesses to promote reciprocal foreign trade and investment;

(12) Assist minority businessmen in business contract procurement from governmental and private commercial sources; and

(13) Provide a program effort to ensure participation of veterans in Arkansas minority business enterprise activities.

15-4-306 - 15-4-310. (RESERVED.)

15-4-311. Title.

Sections 15-4-311 - 15-4-319 shall be known and may be cited as the "Minority Business Economic Development Act."

15-4-312. Purpose.

The General Assembly finds it is the policy of the State of Arkansas to support equal opportunity, as well as economic development in every sector. The

General Assembly hereby recognizes as the purpose of §§ 15-4-311 - 15-4-319 to support to the fullest all possible participation of firms owned and controlled by minority persons in state funded and directed public construction programs, and in the purchase of goods and services for the state. The annual procurement goal of ten percent (10%) for state agencies with minority businesses each year is hereby established.

15-4-313. Definitions.

As used in §§ 15-4-311 - 15-4-319, unless the context otherwise requires:

(1) "Advisory council" or "council" means the Advisory Council to the Division of Minority Business Enterprise created under § 15-4-303;

(2) "Division" means the Division of Minority Business Enterprise of the Arkansas Industrial Development Commission;

(3) "Director" means the Administrator of the Division of Minority Business Enterprise of the Arkansas Industrial Development Commission;

(4)(A) "Exempt" and "nonexempt" mean goods and services classified as either exempt or nonexempt for the purpose of administering §§ 15-4-311 - 15-4-319.

(B) The classification shall be determined by the Office of State Purchasing and the Division of Minority Business Enterprise and submitted to the Advisory Council for its review and consideration for the purposes of §§ 15-4-311 - 15-4-319;

(5) "Minority" means a black citizen or black lawful permanent resident of the state of Arkansas;

(6) "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any goods or services;

(7) "State agency" means all departments, offices, boards, commissions, and institutions of the state, including the state-supported institutions of higher education; and

(8) "State contract" means all types of state agreements, regardless of what they may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.

15-4-314. Advisory Council to the Division of Minority Enterprise.

There is hereby established a formal relationship between the Advisory Council to the Division of Minority Business Enterprise and the minority business officer. The minority business and small disadvantaged business officer shall be the liaison to the council and shall be responsible for submitting to the council any reports and documents under §§ 15-4-311 - 15-4-319. Their duties in relation to §§ 15-4-311 - 15-4-319 shall be considered official duty in the conduct of state business. The council's duties and responsibilities shall be to:

(1) Review reports and interpret each agency's achievement of its goals;

(2) Advise the Governor when an agency has not reached its goals;

(3) Make annual reports to the Governor;

(4) Recommend to the state agency and the division and Office of State Purchasing corrective actions to strengthen minority business opportunities in the state; and

(5) Conduct public hearings when necessary to obtain public input and support for the purpose of carrying out §§ 15-4-311 - 15-4-319.

15-4-315. Administration.

(a) The Division of Minority Business Enterprise and the Office of State Purchasing shall serve as the principal coordinators of the initiative to insure the successful implementation of §§ 15-4-311 - 15-4-319.

(b) The division and the Office of State Purchasing shall provide assistance to minority businesses seeking contract opportunities with various state agencies.

(c) The division and the Office of State Purchasing shall maintain a directory of all minority business officers for each state agency.

(d) The division and the Office of State Purchasing shall provide management and technical assistance to any state agency who is experiencing difficulties in complying with §§ 15-4-311 - 15-4-319.

(e) The division and the Office of State Purchasing shall maintain a current directory of minority businesses and shall make the directory available to each state agency and minority business officer.

(f) The division shall serve as a central clearinghouse for information on state contracts, including a record of all pending state contracts upon which minority businesses may participate.

15-4-316. Exempt contracts.

The Division of Minority Business Enterprise and the Office of State Purchasing, upon the approval of the council, shall determine the classifications of contracts to be exempted from the goals established by §§ 15-4-311 - 15-4-319 whenever there exists an insufficient number of minority businesses to insure adequate competition.

15-4-317. Minority business officer.

(a) Each state agency shall designate an individual as its minority business officer.

(b) The minority officer shall be the person within the agency with whom the division and the council shall work in its efforts to accomplish the goals of §§ 15-4-311 - 15-4-319.

(c) Upon the appointment of the minority business officer in each state agency, the agency shall notify the division and the Office of State Purchasing.

15-4-318. State agencies to submit reports.

The council shall require each state agency to produce within fifteen (15) days

of the close of each six-month period a report summing up total procurement for all contracts, except exempt contracts of the agency, and the dollar value and the percentage of the contracts of the agency awarded to small businesses and small disadvantaged businesses.

15-4-319. Accelerated payments.

To ensure that minority businesses are not financially hindered due to delays in payment by state agencies entering into contracts with minority businesses under the provisions of §§ 15-4-311 - 15-4-319, state agencies shall accelerate payment to minority vendors to preclude accounts receivable problems of minority businesses caused by the state of Arkansas.

A P P E N D I C E S

- 1. Signature Requirements on Invitations for Bid**
- 2. State Accounting and Budgetary Procedures**
- 3. Procurement Codes**
- 4. Risk Management**
- 5. Motor Vehicles**
- 6. Disbursement of Public Funds**
- 7. General Provisions**

APPENDIX 1

SIGNATURE REQUIREMENTS ON INVITATIONS FOR BIDS

Procurement regulation *R7:19-11-229(b)(4)* stipulates *"only signed sealed bids delivered prior to date and time of bid opening shall be accepted."*

The definition of "signed" for our purposes can be found in the Uniform Commercial Code, Arkansas Code Annotated of 1987, § 4-1-201(39) (General Definitions), "...includes any symbol executed or adopted by a party with present intention to authenticate a writing." Allowance should therefor be made for any mark or writing, whether printed or cursive, which that person uses as his/her signature.

§ 19-11-203(29) "Signature" means a manual or an electronic or digital method executed or adopted by a party with the intent to be bound by or to authenticate a record which is:

- (A) Unique to the person using it;**
- (B) Capable of verification;**
- (C) Under the sole control of the person using it; and**
- (D) Linked to data in such a manner that if the data are changed, the electronic signature is invalidated.**

§ 19-11-203(35) "Written" or "in writing" means the product of any method of forming characters on paper, other materials, or viewable screens, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

**Act 905 of 2001, The uniform Electronic Transactions Act
Section 2. Definitions**

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

APPENDIX 2

STATE ACCOUNTING AND BUDGETARY PROCEDURES

SUBCHAPTER 7 - EXPENDITURES GENERALLY

19-4-702. Time limits for presenting vouchers.

(e)(1) All state agencies may carry over from the first fiscal year of any biennium to the second fiscal year of the biennium any unexpended appropriations and funds to the extent necessary to pay for items or commodities ordered at least ninety (90) days prior to the end of the first fiscal year but not received until after the end of the first fiscal year, if the purchase of such items and commodities is substantiated by a written contract resulting from the receipt of a formal bid.

(2) All state agencies may carry over from the first fiscal year of any biennium to the second fiscal year of the biennium any unexpended maintenance and operation appropriations and funds as defined under § 19-4-522 to the extent necessary to pay for renovation and minor and major repairs under the jurisdiction of State Building Services which were under contract at least ninety (90) days prior to the end of the first fiscal year but which will not be completed until after the end of the first fiscal year and is substantiated by a written contract. This carry over provision shall only apply to appropriations and funds involving maintenance and operations.

(3) This subsection shall be supplemental to any other authority granted any state agency by law to carry forward unexpended fund balances from one (1) fiscal year to another.

19-4-704. No obligations without appropriations.

(a) No obligations will be paid from appropriated funds until the General Assembly shall have made an appropriation for that purpose; nor shall any state agency enter into any contract which would contemplate that payments under the contracts would be made beyond the expiration of the biennial period unless the General Assembly, prior to the expiration of the biennial period, makes an appropriation for that purpose, or in the case of multiyear contracts for commodities or services, a determination in writing has been made prior to use that:

(1) Estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) Such a contract would serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(b) In no event shall any obligations be incurred unless there are sufficient funds or an approved federal grant on hand, or estimated to become available, to meet the obligations when they become due.

SUBCHAPTER 17 - PROFESSIONAL AND CONSULTANT SERVICES

§ 19-4-1701. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "State agencies" means all departments, agencies, boards, commissions, and institutions of higher education of the State of Arkansas;

(2) "Contractor" means any person or organization which executes a contract with a state agency under which the person or organization agrees to provide professional services or consultant services to the agency and the individuals performing the services are not state employees occupying regular full-time or part-time or extra help positions provided by law; provided, however, that nothing herein shall be construed to prohibit an institution of higher education from executing a contract with a state agency under which services will be performed by employees of the institution of higher education. An employee or employees of an institution of higher education performing such services to a state agency may receive additional compensation provided:

(A) The institution of higher education requests and receives written approval from the Chief Fiscal Officer of the State as to the amount of additional compensation to be paid to any employee; and

(B) The total salary payments received from the employee's regular salaried position and amounts received for services performed under a professional services contract shall not exceed one hundred twenty-five percent (125%) of the maximum annual salary authorized by law for the employee's position with the institution of higher education. No director or any other department head of any agency of this state shall receive additional compensation under this section.

§ 19-4-1702. Professional services contracts.

(a) A professional services contract between a state agency and a contractor is a contract in which the relationship between the contractor and the agency is that of an independent contractor rather than that of an employee. The services to be rendered consist of the personal services of an individual which are professional in nature. Under such contracts, the agency does not have direct managerial control over the day-to-day activities of the individual providing the services, and the contract shall specify the results expected from the rendering of the services rather than detailing the manner in which the services shall be rendered. Services rendered under a professional services contract may be rendered to the agency itself or to a third-party beneficiary.

(b) Any contract under which the agency retains day-to-day managerial control over the person performing the services or in which the relationship between the contractor and the agency is that of employer and employee is not a

professional services contract is illegal and expressly prohibited. However, the Department of Computer Services is authorized to employ persons over which they exercise day-to-day managerial control as specified under § 25-4-112 for which such services as a professional services contract may be utilized.

§ 19-4-1703. Consultant services contracts.

A consultant services contract is a contract between a state agency and an individual or organization in which the service to be rendered to the agency or to a third-party beneficiary under the contract is primarily the giving of advice by the contractor on a particular problem facing the agency or the third-party beneficiary. The contractor shall have the relationship of an independent contractor with respect to the agency. The agency shall not exercise managerial control over the day-to-day activities of the contractor, but the contract shall specify the results expected from the services to be rendered by the contractor and the advice or assistance to be provided.

§ 19-4-1704. Purpose of contracts.

The principal purpose of a professional services contract or a consultant services contract shall be the procurement of the services of an individual by the state agency rather than the procurement of commodities.

§ 19-4-1705. Contracts exempted.

(a) The provisions of this subchapter shall not be applicable to the contracts of the Arkansas State Highway and Transportation Department covered by the technical work requirements and administrative controls of the Federal Highway Administration, nor shall it be applicable to contracts let by the Arkansas State Highway and Transportation Department wherein the cost and fee are established by competitive bidding.

(b) The provisions of this subchapter shall not be applicable to contracts of institutions of higher education which:

(1) Will be paid in total from funds generated from ticket sales and call for no obligation by the contracting institution beyond the amount received from such revenue source; or

(2) Are for services related to patents, copyrights, or trademarks.

§ 19-4-1706. Conflicting legislation.

In the event that the General Assembly enacts identical legislation in appropriation acts which restrict the use of professional, personal, or consultant services contracts and the restrictions are in conflict with the provisions of this subchapter in regard to such contracts, then the provisions of this subchapter shall supersede and shall be in lieu of such contract restrictions.

§ 19-4-1707. Restrictions on contracts.

(a) In no case should any contract contemplated by this subchapter be utilized to avoid the purpose or the spirit of the Regular Salary Procedures and Restrictions Act, § 19-4-1601.

(b) No contract contemplated by this subchapter may be approved by the Chief Fiscal Officer of the State which requires the services of one (1) or more individuals on a regular full-time or part-time work week basis for longer than one (1) year. However, in the unusual event that the best interest of the state would be served by a contract which exceeds one (1) year, the Chief Fiscal Officer of the State may approve such contract, having first received the advice of the Legislative Council or the Joint Budget Committee.

(c) In no event should any contract be approved which would be in violation of § 19-4-701 et seq. relating to expenditures.

(d) In no event shall any state agency engage in a professional services or consultant services contract with a part-time or full-time employee who occupies a position authorized to be paid from extra help or regular salaries for a state agency.

§ 19-4-1708. General guidelines and regulations.

The Chief Fiscal Officer of the State, after soliciting suggestions from state agencies and after seeking and receiving the advice of the Attorney General and of the Legislative Council, or the Joint Budget Committee if the General Assembly is in session, shall publish general guidelines for the procurement of the two (2) types of contracts specified in this subchapter and general regulations governing the use of each type of contract.

§ 19-4-1709. Standard contract forms.

(a) (1) The Chief Fiscal Officer of the State shall prescribe standard forms to be utilized by all state agencies in the execution of each of the two (2) contracts described in this subchapter.

(2) The Chief Fiscal Officer of the State shall refuse to permit payment of any vouchers under any contract in which a standard form is not utilized or in which all information required by the standard form is not supplied.

(b) The standard contract form shall include the following items plus such additional items as the Chief Fiscal Officer of the State shall deem desirable for the purposes of this subchapter:

(1) A section setting forth in reasonable detail the objectives and scope of the contractual agreement and the methods to be used to determine whether the objectives specified have been achieved;

(2) The rates of compensation, transportation, per diem, subsistence, out-of-pocket allowances, and all other items of costs contemplated to be paid the contractor by the agency;

(3) The method by which the rate of compensation and the total payment

shall be calculated;

(4) The maximum number of dollars which the agency may be obligated to pay to the contractor under the terms of the contract, including all expenses and other items of costs, and the source of funding to be utilized;

(5) The term of the contract;

(6) The names and social security numbers of all individuals who will be supplying services to the agency or to third-party beneficiaries under the terms of the contracts, so far as those names are known to the contractor at the time of the execution of the contract. If the names of all individuals supplying services under the contract are not available at the time of the execution of the contract, the contract shall contain a provision requiring the contractor to submit periodically the names and social security numbers of individuals supplying services as soon as the identity of those individuals is known to the contractor;

(7) Where the contractor is a business entity, the federal identification number of the business entity shall be listed on the contract form;

(8) (A) A certification shall be included, signed by the contractor, as follows:

(name) (title)

"I , certify under penalty of perjury that, to the best of my knowledge and belief, no regular full-time or part-time employee of any state agency of the State of Arkansas will receive any personal, direct, or indirect monetary benefits which would be in violation of the law as a result of the execution of this contract."

(B) For the purpose of this subdivision, it shall be understood that where the contractor is a widely held public corporation, the term "direct or indirect monetary benefit" shall not apply to any regular corporate dividends paid to a stockholder of the corporation who is also a state employee and who owns less than ten percent (10%) of the total outstanding stock of the contracting corporation;

(9) For any contract in which the total compensation exclusive of reimbursable expenses to be paid by the agency does not exceed five thousand dollars (\$5,000), a purchase order may be utilized in lieu of the standard form or forms prescribed by the Chief Fiscal Officer of the State. However, should the agency enter into a subsequent contract with the same individual or organization during the same fiscal year, regardless of the nature of the contract, then the details of the original contract which utilized a purchase order form and of all subsequent contracts, regardless of amount or type, shall be promptly reported to the Chief Fiscal Officer of the State. This reporting shall be done to allow him to determine whether the agency is utilizing a series of contracts to avoid the use of the standard form and to avoid the application of appropriate regulations;

(10) Standard contract forms in use by licensed practitioners such as architects and engineers may be used to supplement the standard contract forms; and

(11) All contracts in which the services of architects or engineers are required for the construction, renovation, or repair of buildings, facilities, or lands

owned or operated by the State of Arkansas shall contain the following clause:

"In the event the State of Arkansas fails to appropriate funds or make moneys available for any biennial period covered by the term of this contract for the services to be provided by the contractor, this contract shall be terminated on the last day of the last biennial period for which funds were appropriated or moneys made available for such purposes.

This provision shall not be construed to abridge any other right of termination the agency may have."

§ 19-4-1710. Submission of contracts required.

(a) (1) Any contract for professional services or consultant services requiring the services of an individual for regular full-time or part-time weekly work where the total compensation exceeds ten thousand dollars (\$10,000) must be presented to the Legislative Council or the Joint Budget Committee by the Department of Finance and Administration prior to the execution date of the contract.

(2) The Legislative Council or the Joint Budget Committee shall provide the Chief Fiscal Officer of the State with their advice as to the propriety of the contract within thirty (30) days of the submission.

(3) This contract shall not be submitted to the Legislative Council or the Joint Budget Committee until the department has reviewed the contract and provided the Legislative Council or the Joint Budget Committee with a recommendation as to the legality of the contract.

(b) The Legislative Council or the Joint Budget Committee may review or exempt from review any contract or group of contracts contemplated by this subchapter.

(c) Funds from grants and contracts to any state institution of higher education may be used for the purpose of subcontracting with institutions under the performance conditions of the grants or contracts. Subcontracts for research that are derived from grants and contracts to any state institution of higher education shall require the prior approval of the Chief Fiscal Officer of the State and a review by the Legislative Council.

§ 19-4-1711. Preaudit requirement.

(a) (1) Every contract covered by this subchapter shall be filed with the Office of Accounting of the Department of Finance and Administration within five (5) working days of the execution date of the contract.

(2) The execution date of all contracts shall be defined as the date upon which performance of the services to be rendered under the contract is to begin and not the date upon which the agreement was made.

(b) (1) No voucher shall be cleared for payment by the Pre-Audit Section of the Department of Finance and Administration if a copy of the contract under which

the payment is being made has not previously been timely filed.

(2) No payment shall be approved covering services rendered prior to the execution date of the contract.

(c) It is the intent of the General Assembly that this section be strictly construed and enforced. However, in the unusual event that an obligation has been incurred by a state agency under any contractual agreement or proposed contract prior to the approval of the contract, the Chief Fiscal Officer of the State may approve payment for such services after having first received the advice of the Legislative Council.

§ 19-4-1712. Certification by agency head.

The head of every agency shall certify by his signature on each contract entered into by that agency that:

- (1) All information required by law and by regulations is supplied;
- (2) The proper contracting form is utilized;
- (3) All information contained in the contract is true and correct to the best of his knowledge and belief;
- (4) All general guidelines prescribed by the Chief Fiscal Officer of the State have been complied with;
- (5) The services proposed to be provided under the contract are necessary for operation of the state agency in fulfilling its legal responsibilities and cannot be provided by any existing state agency;
- (6) The contractor is fully qualified to perform the contract and has no vested interest in the subject matter of the contract which would constitute a conflict of interest and a bar to his providing services of a professional and disinterested quality; and
- (7) The contract terms are reasonable and the benefits to be derived sufficient to warrant the expenditure of the funds called for in the contract.

§ 19-4-1713. Approval or disapproval of contracts.

(a) The Chief Fiscal Officer of the State may make whatever additional inquiry he deems necessary and may require the supplying of additional information should he have reason to believe that the contract should be rejected because it does not comply with the provisions contained in this subchapter.

(b) It shall be the duty of the Chief Fiscal Officer of the State to return as "disapproved" to the contracting state agency any contract which fails to comply with the applicable laws and regulations governing the contract and to approve any contract which does comply with the provisions contained in this subchapter.

(c) The Chief Fiscal Officer of the State shall immediately report to the Legislative Council or the Joint Budget Committee the disapproval of any contracts or payments thereunder and the reasons therefor. The agency involved may then request a hearing before the Legislative Council or the Joint Budget Committee.

(d) The Legislative Council or the Joint Budget Committee, upon a hearing of the facts, may:

(1) Request the state agency to make certain changes in the contract involved;

(2) Request that the Chief Fiscal Officer of the State reconsider his previous disapproval of the contract or payment; or

(3) Notify the state agency that it concurs in the decision of the Chief Fiscal Officer of the State.

(e) The Chief Fiscal Officer of the State shall have final and ultimate authority over the supervision and approval of all contracts described in this subchapter. However, the Chief Fiscal Officer of the State shall seek and receive the advice of the Legislative Council before approving or disapproving any contract or class or group of contracts authorized under the provisions of this subchapter, unless the Legislative Council or Joint Budget Committee specifically exempts the contract or class or group of contracts by formal committee action.

§ 19-4-1714. Monthly report of contracts.

(a) The Chief Fiscal Officer of the State shall design and prescribe a standard monthly report form on which state agencies shall report and describe all contracts executed during a calendar month, including, but not limited to, a description of the services to be provided and the rate of compensation to be paid.

(b) The Chief Fiscal Officer of the State shall verify the correctness of each agency report and shall compile and submit a copy of such reports monthly to the Legislative Council and the Legislative Joint Auditing Committee for their information.

§ 19-4-1715. Filing of contracts.

Service contracts shall be governed by § 19-4-1109 relating to the filing by state agencies of procurement contracts for services so as to be available for public inspection and audit purposes.

§ 19-4-1716. Development and use of performance based contracts.

(a) The General Assembly finds that in the absence of adequate attention to service quality, government programs often become wasteful, ineffective, and unresponsive; that evaluating the quality of service provided under state agency contracts for professional and consulting services is necessary to protect the integrity of state-funded programs; that the State Hospital Board and the Department of Human Services enter into many of these types of contracts that involve millions of dollars of public funds; that requiring the inclusion of a performance evaluation provision in professional service contracts and consulting services contracts entered into by the State Hospital Board and the Department of Human Services will provide a mechanism for evaluating the

quality of service provided under those contracts; and that requiring the State Hospital Board and the Department of Human Services to report annually regarding performance evaluation to the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof will encourage the State Hospital Board and the Department of Human Services to conduct thorough performance evaluations, which may provide information that can help improve the programs and services they provide. Therefore, it is declared to be the intent of this General Assembly to require the State Hospital Board and the Department of Human Services to include performance evaluation provisions in contracts for professional services and consulting services and to report at least annually regarding the evaluation of each contract.

(b) All new professional services contracts and consultant services contracts entered into by the State Hospital Board and the Department of Human Services shall include a performance evaluation provision that outlines a method for evaluating the service provided under the contract. The provision shall identify the goals and performance indicators of the contract and how the state agency intends to evaluate the service provided.

(c) The State Hospital Board and the Department of Human Services shall actively seek appropriate remedy when contract performance is less than satisfactory.

(d) The State Hospital Board and the Department of Human Services shall report to the House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof at least annually regarding the performance evaluation of each professional services contract and each consulting services contract. The House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof may refer contracts related to the Division of Youth Services of the Department of Human Services to the Senate Interim Committee on Children and Youth.

(e) The State Hospital Board and the Department of Human Services shall not extend or renew an existing professional services contract or consultant services contract unless the contract includes a provision for performance evaluation.

(f) This section shall only apply to contracts required to be submitted under § 19-4-1710 and shall not apply to architectural and engineering services contracts.

(g) The House and Senate Interim Committees on Public Health, Welfare, and Labor or appropriate subcommittees thereof shall report to the other interim committees and to the General Assembly on the success of including performance evaluation provisions in professional services and consultant services contracts with regard to the legislative intent of this section and make recommendations with regard to the expansion, continuation, or termination of the use of performance evaluation provisions in professional services and consultant services contracts.

SUBCHAPTER 8 – PROCUREMENT OF PROFESSIONAL SERVICES

19-11-801. Policy.

(a) It is the policy of the State of Arkansas and political subdivisions that the state and political subdivisions shall negotiate contracts for professional services on the basis of demonstrated competence and qualifications for the type of services required and at fair and reasonable prices and to prohibit the use of competitive bidding for the procurement of professional services.

(b) Public school districts shall negotiate contracts for construction management in the same manner as set forth in subsection (a) of this section, except that a two-thirds vote of the board of directors of a public school district shall not be required for a school district to negotiate a contract for construction management.

(c) For purposes of this subchapter, the term "professional services" shall include legal, architectural, engineering, land surveying, and such other consulting services as the political subdivision shall designate by two-thirds vote of its governing body.

19-11-802. Annual statements of qualifications and performance data - Restrictions on competitive bidding.

(a) In the procurement of professional services, a political subdivision which utilizes such services may encourage firms engaged in the lawful practice of these professions to submit annual statements of qualifications and performance data to the political subdivision or may request such information as needed for a particular public project.

(b) The political subdivision shall evaluate current statements of qualifications and performance data of firms on file or may request such information as needed for a particular public project whenever a project requiring professional services is proposed.

(c) The political subdivision shall not use competitive bidding for the procurement of professional services.

(d)(1) A public school district that utilizes construction management services shall encourage construction management firms to submit to the school district annual statements of qualifications and performance data or may request such information as needed for a particular public project.

(2) The public school district shall evaluate current statements of qualifications and performance data on file with the school district or when submitted as requested whenever a project requiring professional services of a construction manager is proposed.

(3) The public school district shall not use competitive bidding for the procurement of professional services of a construction manager.

19-11-803. Evaluation of qualifications.

In evaluating the qualifications of each firm, the political subdivision shall consider:

(1) The specialized experience and technical competence of the firm with respect to the type of professional services required;

(2) The capacity and capability of the firm to perform the work in question, including specialized services, within the time limitations fixed for the completion of the project;

(3) The past record of performance of the firm with respect to such factors as control of costs, quality of work, and ability to meet schedules and deadlines; and

(4) The firm's proximity to and familiarity with the area in which the project is located.

19-11-804. Selection.

The political subdivision shall select three (3) qualified firms. The political subdivision shall then select the firm considered the best-qualified and capable of performing the desired work and negotiate a contract for the project with the firm selected.

19-11-805. Negotiation of contracts.

(a) For the basis of negotiations, the political subdivisions and the selected firm shall jointly prepare a detailed, written description of the scope of the proposed services.

(b) If the political subdivision is unable to negotiate a satisfactory contract with the firm selected, negotiations with that firm shall be terminated. The political subdivision shall then undertake negotiations with another of the qualified firms selected. If there is a failing of accord with the second firm, negotiations with such firm shall be terminated. The political subdivision shall undertake negotiations with the third qualified firm.

(c) If the political subdivision is unable to negotiate a contract with any of the selected firms, the agency shall reevaluate the necessary professional services, including the scope and reasonable fee requirements, again compile a list of qualified firms, and proceed in accordance with the provisions of this subchapter.

(d) When unable to negotiate a contract for construction management, a public school district shall also perform a reevaluation of services in accordance with subsection (c) of this section.

19-11-806. Cities of the first or second class - Ordinances.

(a)(1) Any city of the first or second class, or any incorporated town, that defines a professional service pursuant to this subchapter must do so by ordinance.

(2) Any ordinances that define a professional service must be read publicly at two (2) regularly scheduled meetings.

(3) No ordinance that defines a professional service may be adopted with an emergency clause.

(b)(1) In addition, in a city of the first or second class or an incorporated town which has delegated the operation of its water or sewer services to a board of

public utilities or commission, it shall be the responsibility of that board or commission to define a professional service as used in this subchapter.

(2)(A) It shall be defined by a motion or resolution of the board or commission.

(B) The motion or resolution defining a professional service shall be read publicly at two (2) regularly scheduled meetings and shall be effective thirty (30) days after its second reading and passage.

APPENDIX 3

PROCUREMENT CODES

| <u>CODE</u> | <u>CODE DESCRIPTION</u> | <u>EXPLANATION</u> |
|-------------|-------------------------|--|
| EI | Exempt Item | Use for payroll items |
| EL * | Exempt from | Procurements listed as exempt in A.C.A. of 1987, |
| ML | Purchasing Law | § 19-11-203(5) and (14) |
| EM | Emergency | Acquisitions of commodities or services which, |
| MM | | if not immediately initiated, will endanger human life, health, state property or the functional capability of a state agency |
| SS | Sole Source | Procurements which, by virtue of the performance specification, are available from a single source, including repairs involving hidden damages |
| MS | | |
| SO | Small Order | Purchases not subject to Amendment 54 to the Arkansas Constitution, not included on state contract, and costing \$5,000 or less |
| MO | | |
| QC | Quote | Procurements of printing and supplies subject to Amendment 54 to the Arkansas Constitution, not included on state contract, and costing \$25,000 or less; whenever possible, at least three competitive bids must be obtained. Quotations in this category may be obtained by state agencies only if issued a delegation order for this specific purpose. |
| MC | Constitutional Item | |
| CB | Competitive Bid | Procurements not subject to Amendment 54 to the Arkansas Constitution, not included on state contracts, and costing between \$5,000 and \$25,000 |
| MB | | |
| WS | Workshop Products | Items listed in the workshop-made products price list in accordance with A.C.A. of 1987, § 19-11-901 of subchapter 9 |
| ER | Exempt by | Retail credit card purchases |
| MR | Purchasing Regs | |
| ST | State Term | Procurements made under a term contract issued by the Office of State Procurement |
| MT | | |

| | | |
|----------|-----------------------|---|
| SF MF | State Firm | Procurements made by the issuance of a firm contract by the Office of State Procurement |
| AA MA | Agency Contract Award | Procurements made under a term contract by a state agency having an Agency Procurement Official |
| AX MX | Agency Quantity Fixed | Procurements made by the issuance of a fixed quantity contract by a state agency having an Agency Procurement Official |
| BU MU | Bid Unsuccessful | Procurements authorized by Agency Procurement Officials for their agency or the Office of State Procurement for all other state agencies when the competitive sealed bid process has produced no satisfactory results |
| FE ME | Funds Exempt | Procurements from auxiliary and restricted funds |
| RP MP | Resale Purchase | Items procured for resale in cafeterias, bookstores, etc.; however, these items cannot be transferred or sold to a department or agency in order to circumvent applicable procurement procedures |

***EXAMPLES:**

Exempt by Act 482:

1. Interagency expenditures
2. Travel reimbursement
3. Taxes
4. Advertising in newspapers
5. Fees
6. Postage
7. Copyrighted educational aids
8. Services of visiting speakers
9. Freight and storage charges
10. Licenses
11. Arkansas Highway Department for construction, reconstruction and maintenance of roads and bridges

Exempt by other laws:

1. Contract labor
2. Workers' compensation
3. Professional and consultant services contracts

MINORITY PURCHASES

The purchase codes have been revised to enable automatic reporting of minority purchases by the Department of Finance and Administration, relieving state agencies from the requirements of submitting the reports. Agencies need only enter the second alpha designator on requests or invitations to bid prior to award. The first alpha designator is added at the time of award. If awarded to a minority vendor, the first alpha designator will be an "M" in all cases. If awarded to other than a minority vendor, the alpha designator will be that indicated in the above list of purchase codes.

APPENDIX 4

RISK MANAGEMENT

LEGISLATION ENACTED TO CREATE A RISK MANAGEMENT DIVISION WITHIN THE STATE INSURANCE DEPARTMENT

23-61-602. Purpose.

(a) It is the purpose of this subchapter to reduce the cost to the state of insurance coverage, including surety bonds, by establishing the Risk Management Division.

(b) It is also the purpose of this subchapter that the Risk Management Division analyze and make recommendations as to cost-effective loss control and safety programs for the various state agencies.

(c) It is also the purpose of this subchapter to authorize the Risk Management Division to advise and give assistance to municipalities, counties, school districts, and improvement districts as to the procurement of insurance coverage and other risk management techniques.

23-61-603. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Risk manager" shall refer to the Administrator of the Risk Management Division;

(2) "State agencies" means any agencies, boards, bureaus, commissions, councils, departments, institutions, or other establishments of this state;

(3) "Risk management" is the minimization of loss through the discovery of loss sources, evaluation of the impact of a possible loss on the organization, and the selection of the most effective and efficient technique of dealing with risk of loss.

23-61-604. Risk Management Division - Creation.

There is created a Risk Management Division within the State Insurance Department.

23-61-605. Risk Manager - Appointment - Authority.

(a)(1) The risk manager will be appointed by the Insurance Commissioner.

(2) The risk manager shall be knowledgeable and experienced in risk management techniques.

(b) The risk manager shall have the authority to:

(1) Establish standardized specifications for insurance coverage of all state agencies;

(2) Determine all specifications for insurance coverage of state agencies;

- (3) Assist and advise state agencies in the procurement of insurance coverage;**
- (4) Establish a system for reporting insured or uninsured losses incurred by state agencies and purchases of insurance by state agencies within guidelines established by the risk manager;**
- (5) Develop and promote programs to control losses and encourage safety;**
- (6) Perform any other function of risk management as directed by the commissioner.**

23-61-606. Procurement of insurance or surety bonding.

(a) The State Purchasing Director shall procure insurance or surety bonding in accordance with the Arkansas Purchasing Law, §19-11-201 et seq., unless the risk manager determines that it is in the best interest of the state for the State Purchasing Director to procure insurance or surety bonding by negotiation, or for any state agency to procure all or part of its own insurance or surety bonding.

(b) When the risk manager authorizes state agencies to procure insurance or surety bonding, the authorization shall be made in writing and approved by the Insurance Commissioner. The authorization may be made for, but not limited to, purchases not exceeding an amount established by regulations, particular lines of insurance, and purchases by state agencies with a demonstrated expertise in the field of risk management.

(c) Upon approval of the risk manager and the State Purchasing Director, a state agency may be authorized to procure insurance or surety bonding under emergency conditions. Emergency conditions exist when life, health, welfare, assets, or functional operations of an agency are or may be threatened or impaired.

(d) The State Purchasing Director shall not have jurisdiction over the procurement of surety bonding or insurance coverage for state agencies except as provided by this subchapter.

23-61-607. Rules and regulations.

(a) The risk manager shall have the authority to promulgate rules and regulations consistent with this subchapter.

(b) All rules and regulations shall be subject to the approval of the Insurance Commissioner and conform with the requirements of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., as now written or as it may be amended.

23-61-608. Advice and assistance for certain political subdivisions.

(a) At the request of any municipality, county, school district, or improvement district, the risk manager may give advice and assistance on the purchase of insurance coverage and other risk management techniques.

(b) However, counties, municipalities, school districts, and improvement districts may be required to reimburse the State Insurance Department for

expenses incurred by providing the assistance. Reimbursements shall not include salary and benefit expenses for full-time state employees.

(c) The reimbursements shall be deposited in the State Treasury as nonrevenue receipts refund to expenditures.

(d) This section shall only be used in the event that budgetary constraint dictates this action to prevent undue fiscal hardships on the State Insurance Department.

23-61-609. Reports by state agencies.

State agencies shall report to the risk manager information that the risk manager determines to be necessary to analyze and manage the risk of loss of state assets.

23-61-610. Annual report.

The risk manager shall report annually to the Governor and the Legislative Council on his findings and recommendations.

APPENDIX 5

MOTOR VEHICLES

LEGISLATION ENACTED TO REQUIRE THAT ALL STATE-OWNED MOTOR VEHICLES BE REGISTERED ANNUALLY AND TO REGULATE THE LEASING OF MOTOR VEHICLES BY STATE AGENCIES

22-8-101. Registration of state-owned motor vehicles - Report.

(a)(1) In order that a complete inventory of all state-owned motor vehicles is maintained, every state agency, including the Arkansas State Highway and Transportation Department, the Arkansas State Game and Fish Commission, the Arkansas State Police, the National Guard, and all constitutional offices shall annually register each motor vehicle owned by the State of Arkansas with the Director of the Department of Finance and Administration in a manner prescribed by the director.

(2) The registration shall include a description of each motor vehicle including the year, make, model, license number, vehicle identification number, and other information which the director might require.

(3) Whenever any state agency sells or disposes of a motor vehicle, a complete record thereof shall be furnished to the director as authorization for the removal of the vehicle from the official state inventory.

(4) Whenever any state agency acquires a new or additional motor vehicle, the information required by this subsection to be placed in the state inventory shall be furnished to the director within ten (10) days after the acquisition of the vehicle by the agency.

(5) The director shall keep the inventory of motor vehicles owned by the State of Arkansas and its agencies current at all times, categorized in accordance with the motor vehicles owned by each of the respective state agencies.

(b)(1) The director shall make an annual report to the Legislative Council as to the number of motor vehicles owned by the State of Arkansas.

(2) The report shall include a comparison of the current inventory of motor vehicles with an inventory of the preceding year.

22-8-102. Leasing **and renting** of vehicles by state agencies.

(a) For purposes of this section:

(1) "Lease" means obtaining the use of a motor vehicle from any source for a monetary fee, for a period of thirty-one (31) days or more; and

(2) "Rental" means obtaining the use of a motor vehicle from any source for a monetary fee, for a period of thirty (30) days or less.

(b)(1) Before any state agency shall lease any motor vehicle or renew any existing lease for a motor vehicle, the agency shall submit a written request therefor to the Director of the Office of Procurement of the Department of Finance and Administration identifying the motor vehicles sought to be leased by the

agency and all facts and circumstances the Director of the Office of Procurement of the Department of Finance and Administration may request to enable him to determine the economics, need, and feasibility of leasing the motor vehicle.

(2) Upon receipt, the Director of the Office of Procurement of the Department of Finance and Administration shall review the request to lease the motor vehicle, and if he determines that the lease is in the best interest of the State of Arkansas and that the agency has adequate funds to pay the lease, he may approve the request, but only if he shall have first received the approval of the Legislative Council.

(3) After receiving the approval of the Legislative Council, the Director of the Office of Procurement of the Department of Finance and Administration shall stamp his approval on the request and return it to the state agency, which may then proceed to enter into the lease as proposed and approved by the Director of the Office of Procurement of the Department of Finance and Administration.

(4) In emergency situations, the Director of the Office of Procurement may approve a temporary lease of a motor vehicle, not to exceed thirty (30) days, but only if he has sought the advice of the Chairman of the Legislative Council and scheduled the temporary lease of a motor vehicle for consideration at the next meeting of the Legislative Council.

(c) If the Director of the Office of Procurement shall disapprove a proposed lease of a motor vehicle, he shall stamp his disapproval on the request and return it to the state agency, and it shall be unlawful for the state agency to proceed to lease the motor vehicle.

22-8-103. Penalty for noncompliance with §§ 22-8-101 and 22-8-102.

Any department head or employee of the State of Arkansas failing or refusing to carry out the provisions of §§ 22-8-101 and 22-8-102 shall be deemed guilty of a Class B misdemeanor and upon conviction shall be punished in the manner provided by law.

22-8-104. Private use of state or county vehicles - Penalty.

(a) It shall be unlawful for any state or county employee, who is employed by the Arkansas State Highway and Transportation Department or by a county highway department, county judge, or road commissioner to use trucks and automobiles that belong to the state or county for any purpose other than performing actual service for the state or county.

(b) The use of publicly owned cars and trucks for individual use to make pleasure trips on Sundays and other holidays, except when going to and from the place of employment or transporting tools, material, and other supplies to places of necessity, is prohibited.

(c) The provisions of this section shall not be so construed as to prevent judges and road commissioners from making road inspection trips when the judge or road commissioner deems the inspection necessary.

(d) Any person who violates any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00).

APPENDIX 6

SUBCHAPTER 12 - DISBURSEMENT OF PUBLIC FUNDS

19-4-1206. Duties generally.

(a) The bonded disbursing officer for each state agency or the bonded disbursing officer for any regular or special fund provided for by the General Assembly shall be responsible and held accountable for the proper expenditure of the funds under his control.

(b) It shall be the responsibility and duty of each disbursing officer or agent to:

(1) Keep advised as to the availability of the appropriations and funds for which he is the disbursing officer and be informed as to the legality of and authority for any obligations which may be incurred before any disbursements are made:

(2) Keep advised as to the laws or administrative regulations relating to general accounting procedures and restrictions for the disbursement of funds; and

(3) Certify that:

(A) Any disbursements which he may make are in accordance with the terms of any applicable contracts, **procurement** procedure, or other authority;

(B) The services have been performed or the goods received; and

(C) The vendor or payee is entitled to the amount set forth in the check or voucher.

APPENDIX 7

SUBCHAPTER 1 - GENERAL PROVISIONS

19-11-101. State printing clerk.

(a) The disbursing officer of each agency, board, commission, department, or institution shall be responsible for reviewing all invoices prepared by commercial printers or suppliers holding commercial contracts to make certain that the charges to the agency, board, commission, department, or institution are proper under the terms of the contract.

(b) The Office of State Purchasing of the Department of Finance and Administration shall maintain complete files, which shall be open to public inspection, on all commercial term and one-time contracts. The files shall contain:

- (1) A copy of the contract;
- (2) A list of all printing or duplicating done or commodities ordered, as well as the name of the invoiced agency;
- (3) A copy of all correspondence regarding the contract or jobs performed thereunder; and
- (4) A listing of the warrant number and amount of each warrant issued in payment of each job performed or commodity delivered.

19-11-102. Use of soybean ink in state printing.

Notwithstanding any law, rule or regulation to the contrary, all printing which is chargeable to or which is paid for with funds appropriated wholly or in part by the state, or any state department, division, bureau, board, commission, or agency, shall be printed in soybean ink; provided, however, that the soybean ink is comparable in price to other inks and that it is equally suitable for use.